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United States Detention Policy in Counterterrorism and Counterinsurgency Operations: 2001 to 2011

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**United States Detention Policy in
Counterterrorism and Counterinsurgency
Operations: 2001 to 2011**

By

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Thesis submitted for the degree of Doctor of Philosophy (PhD)

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5 May 2013

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ABSTRACT

This thesis examines United States detention policy and operations in the conflicts in Afghanistan and Iraq and the use of Guantanamo Bay as a key node in detention operations between 2001 and 2011, when the US was engaged in counterterrorism and counterinsurgency operations against various transnational and radical religious extremists.

The purpose of this thesis is to synthesise information from 76 primary source interviews and various secondary sources, analyse US detention operations, and provide suggestions for detention policy makers for future conflicts. These first-hand accounts facilitate an accurate portrayal of events because of the depth and breadth of the experience of the sources from senior policy advisors in the US government to high ranking general officers in charge of detention operations to military personnel involved in day to day detainee operations and interrogations. The topic is further elucidated by the examination of the many declassified government documents and official Department of Defence press releases.

This thesis illustrates how the conflicts in Afghanistan and Iraq followed an historic detention cycle where mistakes made led to lessons learned and impacted policy that affected not only detention procedure, but the overarching counterinsurgency effort.

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List of Acronyms and Abbreviations

AAR - After Action Review.

ACHR - Afghan Commission for Human Rights.

ACLU - American Civil Liberties Union.

ANA - Afghan National Army.

ANDF - Afghan National Detention Facility.

AFOSI - Air Force Office of Special Investigations.

AFPAK - Afghanistan and Pakistan region.

AIT - Advanced Individual Training.

BCCF - Baghdad Central Correctional Facility.

BCP - Bagram Collection Point.

BHA - Bagram Holding Area.

BTIF - Bagram Theater Internment Facility.

CENTCOM - Central Command.

CFLCC - Coalition Forces Land Component Command.

CI - Counterintelligence.

CID - Criminal Investigation Division of the Army.

CJCS - Chairman of the Joint Chiefs of Staff.

CJIATF - Combined (Allied forces) Joint (Either Army, Navy, Air Force, Marines)

Interagency (any non-military organisation in the US government) Task Force.

CITF - Criminal Investigative Task Force.

COMISAF - Commander, International Security Assistance Force, Afghanistan.

COA - Course of Action.

COCOM - Combatant Commander.

COG - Center of Gravity.

CPA - Coalition Provincial Authority.

CPD - Central Prisons Directorate.

CTC - Counterterrorism Center, CIA.

DASD - Deputy Assistant Secretary of Defence.

DAT - Detainee Assessment Team.

DEPSECDEF - Deputy Secretary of Defence.

DFIP - Detention Facility in Parwan.

DHU - Detainee Housing Units.

DIA - Defense Intelligence Agency.

DNI - Director of National Intelligence.

DOD - Department of Defense.

DOJ - Department of Justice.

DOTC - Detention Operations Training Center.

DRB - Detainee Review Boards.

EC - Enemy Combatant.

ECRB - Enemy Combatant Review Boards.

EPW - Enemy prisoner of war.

ERF - Emergency Reaction Force.

EUPOL - European Union Police Mission in Afghanistan.

FAO - Foreign Area Officer.

FBI - Federal Bureau of Investigation.

FCI - Foreign Counterintelligence.

FDS - Field Detention Site.

FOB - Forward Operating Base.

G-2 - Army intelligence section at the Division level or higher.

G-3 - Army operations section at the Division level or higher.

GTMO - Guantanamo Bay Naval Base.

HDC - Historic Detention Cycle.

HLEC - High Level Enemy Combatant.

HUMINT - Human Intelligence.

HVT - High Value Target.

HVD - High Value Detainee.

IC - Intelligence Community.

ICE - Interrogation Control Element.

ICRC - International Committee of the Red Cross.

ID - Infantry Division.

IED - Improvised Explosive Device.

IG - Inspector General.

ISAF - International Security Assistance Force Afghanistan.

ISN - Internment Serial Number.

IO - Information operations.

IW - Irregular Warfare.

JCIP - Justice Center in Parwan.

JCS - Joint Chiefs of Staff.

JEC - Juvenile Enemy Combatants.

JDAMS - Joint Direct Attack Munitions.

JDEC - Joint Document Exploitation Center.

JDOG - Joint Detention Operations Group.

JEC - Joint Enabling Capabilities.

JECC - Joint Enabling Capabilities Command.

JFCOM - Joint Forces Command.

JIATF CT - Joint Interagency Task Force for Counterterrorism.

JIC - Joint Interrogation Center.

JIDC - Joint Interrogation and Debriefing Center.

JIF - Joint Interrogation Facility.

JIG - Joint Intelligence Group.

JMD - Joint Manning Document.

JSOC - Joint Special Operations Command.

JTF 160 - Joint Task Force 160.

JTF 170 - Joint Task Force 170.

JTF GTMO - Joint Task Force Guantanamo Bay.

JTTF - Joint Terrorism Task Force.

KAF - Kandahar Airfield.

KMTC - Kabul Military Training Centre.

KSM - Khalid Sheikh Mohammed.

KTIF - Kandahar Theater Internment Facility.

LLEC - Low Level Enemy Combatant.

LOAC - Law of Armed Conflict.

MI - Military Intelligence.

MNFRFC - Multi-National Force Review Committee.

MNF I - Multi National Force-Iraq.

MP - Military Police.

NATO - North Atlantic Treaty Organization.

NCOIC - Non Commissioned Officer-in-Charge.

NDRC - National Detainee Reporting Center.

NLEC - No Longer Enemy Combatant.

NPWIC - National Prisoner of War Information Centre.

NSA - National Security Agency.

NSA - National Security Advisor.

NSC - National Security Council.

NSD - National Security Directive.

NSW - Navy Special Warfare.

ODA - Operational Detachment Alpha.

ODNI - Office of the Director of National Intelligence.

OEF - Operation Enduring Freedom.

OGA - Other Government Agency.

OIC - Officer in Charge.

OIF - Operation Iraqi Freedom.

OPLAN - Operational Plan.

PMG - Provost Martial General.

PDD - Presidential Decision Directive.

PR - Personal Representative.

PSYOP - Psychological operations.

POTUS - President of the United States.

POW/POWs - Prisoner (s) of War.

PUC - Person Under US Control.

SCOTUS - Supreme Court of the United States.

SEAL - Sea, Air, Land.

SECDEF - Secretary of Defence.

SERE - Survive, Evade, Resist, Escape.

SES - Senior Executive Service.

SJA - Staff Judge Advocate.

STHF - Short-Term Holding Facility, Kandahar, Afghanistan.

SIGINT - Signals intelligence, information derived from signals.

SME - Subject Matter Expert.

SOF - Special Operations Forces.

SOLIC - Special Operations and Low Intensity Conflict.

SOP - Standard Operating Procedures.

SOUTHCOM - United States Southern Command.

UN - United Nations.

USAF - United States Air Force.

USD - Under Secretary of Defence.

USD (P) - Under Secretary of Defence for Policy.

USFOR-A - United States Forces Afghanistan.

USMC - United States Marine Corps.

USN - United States Navy.

Introduction

A prisoner of war is a man who tries to kill you and fails, and then asks you not to kill him.

- Winston Churchill¹

The United States (US) has been engaged in more than a decade of war since 11 September 2001 (9/11). This research started with the question: ‘what role does detention play in counterinsurgency-counterterrorism operations in the Global War on Terror?’ Prior to conducting the research, I hypothesised that detention operations play a critical role in conducting successful counterinsurgency-counterterrorism campaigns. Academics,² international human rights advocates,³ journalists,⁴ lawyers,⁵ and internal political organisations⁶ have accused the US government of allowing the abuse of detainees for intelligence collection purposes since 9/11.⁷ This thesis examines this issue and in the process separates the myths and misinformation from the reality of US detention operations and its tactics in removing combatants from the battlefield and extracting intelligence from them.

An examination of the historical record of US detention operations revealed a pattern; one of the key outcomes of this research stems from this pattern. It is a model that I characterise as a Historic Detention Cycle (HDC). This six-stage cycle is evident

¹ Winston Churchill section, *Brainy Quotes*, Available at: www.brainyquote.com/quotes/authors/w/winston_churchill.html, Accessed 13 November 2010

² Alfred McCoy, *A Question of Torture: CIA Interrogation, from the Cold War to the War on Terror*, (NYC: Owl Books, 2006), Joseph Margulies, *Guantanamo and the Abuse of Presidential Power*, (NYC: Simon & Schuster, 2007), Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror*, (NYC: NYRB, 2004), Laurel Fletcher and Eric Stover, *The Guantanamo Effect: Exposing the Consequences of U.S. Detention and Interrogation Practices*, (Berkely, CA: University of California Press, 2009), Stephen F. Eisenman, *The Abu Ghraib Effect*, (London, UK: Reaktion Books Ltd., 2007)

³ Andy Worthington, *The Guantanamo Files: The Stories of the 774 Detainees in America's Illegal Prison*, (London: Pluto Press, 2007)

⁴ Trevor Paglen and A.C. Thompson, *Torture Taxi*, (Hoboken, NJ: Melville House Publishing)

⁵ Mark P. Denbeaux(ed.), Jonathan Hafetz (ed.), *The Guantanamo Lawyers: Inside a Prison, Outside the Law*, (NYC: New York University Press, 2009)

⁶ *Inquiry Into the Treatment of Detainees in US Custody*, Committee on Armed Services, (Washington, DC: United States Senate, 20 November 2008)

⁷ Michael Haas, *George W. Bush, War Criminal?: The Bush Administration's Liability for 269 War Crimes*, (Westport, CT: Praeger Publishers, 2009)

in current detention operations in Afghanistan, Guantanamo Bay (GTMO), and Iraq. Although symptomatic of the last stage of the HDC is an institutional lapse of operational memory, this dissertation demonstrates that the US military is, in practice, a learning organisation⁸ that collects lessons learned for the historical record and usually attempts to integrate them into their operations.

By analysing the development of US detention policy in Afghanistan, GTMO, and Iraq and exploring its effect on counterinsurgency-counterterrorism operations, this thesis will expose no systemic plan to torture, abuse, or violate the laws of war. Rather, it will demonstrate how policy decisions were dictated by the rapidly-unfolding military operations and other events on the ground. Inevitably, this ad hoc, if perhaps unavoidable approach, has meant that the US has got some things right and other things wrong while figuring it out along the way.

Thesis Statement

This dissertation argues that when the US government fails to conduct detention operations according to military doctrine and law, it becomes a strategic liability to the objective of counterinsurgency - winning the hearts and minds of the contested population. Many journalists and observers have criticised the detention policies of past and present administrations since 9/11, but this dissertation aspires to separate the politically charged rhetoric from the historical record and make recommendations for future detention policymakers.

Methodology

George Santayana said ‘those who cannot remember the past are condemned to repeat it’.⁹ I chose to apply the historical approach to this dissertation. There are two main reasons for this. The historical method efficiently orders facts in a linear sequence and

⁸ Peter Senge, *The Fifth Discipline*, (NYC: Currency and Doubleday, 1994), p. 14

⁹ George Santayana, *The Life of Reason* (NYC: C. Scribner’s Sons, 1905), p. 284

cogently provides conclusions to assist policymakers and leaders in applying lessons learned to future operations. The application of the historical method to multiple case studies – Afghanistan, GTMO, and Iraq – is especially helpful in the discovery of key detention errors that present the greatest liability to counterinsurgency-counterterrorism operations. This is vital because of the devastating, violent, and mortal consequences of repeating mistakes in counterinsurgency-counterterrorism detention operations. Secondly, the policy under examination – US detention policy – evolved over a historical timeline as historical events on the ground occurred. For this reason the historical approach appeared to be a viable and suitable framework for examining what I believe is a difficult story that needs to be told.

One challenge of the historical approach in dealing with this topic is the lack of access to the official record. Initially most of the documents were classified, but gradually, through Freedom of Information Act requests, many documents were declassified; today many are archived in open source websites, as well as the Department of Defence's web page dedicated to detention documentation. Still, many of these documents are redacted and frustrating to critical observers who are insensitive to the reality that the US government must protect some information; they must rely on other sources to fill in the blanks.

Central to historical methodology is the comparison of authenticated primary accounts with secondary open source media coverage and official government reports. Primary sources and eyewitness accounts must be interpreted qualitatively for bias, propinquity, competency, and agreement in order to synthesise evidence and establish facts.

Governments and militaries often engage in action research to address immediate problems; crisis action teams, advisory, and assistance teams, special task forces, and 'czars' are appointed to evaluate issues and solve problems. Action

methodology could not be employed in this study without government authorisation to conduct onsite research, and is not generalizable because independent variables cannot be controlled. Without quantifiable data, the correlation and experimental methodologies were ruled out. Finally, the comparative approach was ultimately unsatisfactory because this dissertation was less concerned with social and cultural interactions than with the cause and effect of historical events.

Historical Context

The US began operationalizing detention policy at the start of the Revolutionary War. General George Washington said: ‘Whatever Prisoners you take, must be treated with Kindness and Humanity. Their private Stock of Money and Apparel to be given them, after being strictly searched’.¹⁰ He advised his troops: ‘. . . Treat them [prisoners] with humanity, and Let them have no reason to Complain of our Copying the brutal example of the British Army in their Treatment of our unfortunate brethren . . . Provide every necessary thing for them on the road’.¹¹ Washington also struggled to legitimise his soldiers as lawful combatants under British law as opposed to being labelled rebels or traitors. The US faced a similar struggle to classify non-state-affiliated detainees in the wake of 9/11.

In 1785, the US dealt with its first foreign detention crisis, centred in the Islamic North African states of Morocco, Tunis, Algiers, and Tripoli. Washington lacked the resources to respond militarily, so the US paid the Barbary Pirates for detainee releases until 1815 when the US was strong enough to fight back.¹² Classification issues were less relevant in The War of 1812, because England recognised America’s autonomy, similar to circumstances after the US invasion of Iraq where classification issues were clearer than they had been immediately following 9/11. Captured Iraqi military

¹⁰ George Washington, Letter to Charles Dyar, 20 January 1776

¹¹ David Fischer, *Washington’s Crossing*, (Oxford, UK: Oxford Press, 2004), p. 379

¹² Joshua London, *Victory in Tripoli*, (Hoboken, NJ: John Wiley & Sons, 2005), pp. 27-28, 37-38

personnel fell under the Geneva Conventions and the classification of enemy combatants was applied to foreign fighters and Iraqi insurgents.

The American Civil War was a watershed for US detention policy for three reasons. First, it had been decades since the last major detention operation and much had to be re-learned. Second, the argument over prisoner status was hotly contested. Finally, the war was so massive in scale that prisoners numbered in the hundreds of thousands. The decade of war since 9/11 has also been characterised by the relearning of detention doctrine, the detainee classification debate, and the length and cost of the war including the care and feeding of massive numbers of detainees. The incorporation of the principles of the Lieber Code in 1863, (Appendix A) by Abraham Lincoln, served as a model for prisoner rights in the wars of the next century, as well as the first Geneva Convention in 1864.¹³ Likewise, in the post 9/11 era, key detention doctrines emerged that clarify and define the treatment, trial, and detainee release process for future conflicts.

The US took few prisoners during World War One (WWI) compared to World War Two (WWII), when the US detained almost 500,000 prisoners inside the continental US. As US military personnel were detained and the US detained foreign military personnel in each successive detention mission (Korea, Vietnam, Gulf War I), US detention policy was further shaped. To date, only the US government knows the total number of detainees held during the wars in Iraq and Afghanistan; it is certain that whatever the numbers and wherever the location, this massive contemporary detention mission will shape US policy for the rest of the twenty-first century.

Framework

Upon examination of the historical record, the pattern that emerges is a model I call the Historic Detention Cycle (HDC), a six-phase sequence that represents my original

¹³ *Development of modern international humanitarian law*, ICRC, 13 May 2010, Available at: www.icrc.org, Accessed 30 March 2011

contribution to the body of knowledge for detention policy in counterinsurgency-counterterrorism operations. Particularly in counterinsurgency-counterterrorism conflicts, it is critical to conduct detention operations legally and humanely or it becomes a strategic liability. Success in a military campaign may very well hinge on detention operations, especially in a counterinsurgency-counterterrorism campaign where the objective is to win the hearts and minds of the contested population. In the first phase of the HDC, the conflict breaks out and detainees are captured. In the second, mistakes are made in detainee handling and incarceration. In the third phase, detainee operations improve as corrections are made. In the fourth, detainees are released amidst the conflict and at its conclusion. A release during this phase refers to a detainee who has been processed into a US detention facility and has spent several months to years in a facility. Releases of detainees who have been held for a short amount of time may occur at any point in phase one and two. A release may be to a host nation government or back to their own home. In conventional wars where two parties are bound by the Geneva Conventions, prisoners of war and other detainees are usually held until the end of a conflict. In a counterinsurgency-counterterrorism environment they may be held until the end of a conflict or released throughout the conflict to assist with the population centric 'hearts and minds' focus. During the fifth, the end-of-conflict detention operational lessons are recorded. Finally, in the sixth phase of the HDC, the peacetime military disremembers how to conduct detainee operations effectively. (Appendix B)

The second phase of the HDC is the most critical during a counterinsurgency-counterterrorism campaign; it is likely that this is where a campaign will be won or lost. The damage done by poorly executed detention operations creates such ill-will among the local population, that no matter what tactical successes follow, it may be impossible to accomplish the war termination objectives. The third phase of the HDC comes next

in terms of significance; during this phase the counterinsurgent-counterterrorist must work swiftly to make corrections and attempt to reverse the damage done in phase two. This is a challenge, as insurgent-terrorist forces will seek to capitalise on the mistakes of the detaining power. The HDC is evident throughout US military history, but the phases may vary slightly from conflict to conflict. Often phases overlap depending on the specific nature of the war; the goal is to avoid getting mired in the chronic mistakes of phase two.

Literature and Sources

Much has been written about US detention operations historically over the years dealing mostly with conventional warfare but there is a dearth of in-depth scholarly research on the role of detention operations in counterinsurgency-counterterrorism for the period from 2001 to 2011. I began my research by collecting every book and scholarly article available on US detention operations. From 2009 to 2010, I auto-mined the internet for every news article and declassified government document relating to detention operations and counterinsurgency/counterterrorism. What I found was snapshots of short articles in journals or books of specific periods dealing with detention operations in counterinsurgency-counterterrorism. More books and papers have been written dealing with the legal and policy side of the issue but fewer have been written dealing with actual detention operations, the gap my dissertation seeks to fill.

This is not surprising given the fact that most military personnel are not going to write about current operations while they are on-going unless they are directed to by their chain of command or have left the military altogether. Non-government academic researchers and lawyers are not bound by the same military guidelines and are generally more inclined to write works for publication by virtue of their professions. Many of their writings have been incorporated into this study. The Afghanistan case study was

enhanced by the works of former CIA case officers Gary Berntsen¹⁴ and Gary Schroen,¹⁵ Doug Stanton who wrote a detailed account of the 5th Group Special Forces soldiers who were part of the first wave into Afghanistan in 2001,¹⁶ Peter Bergen's detailed reporting on the Arab Jihadist network,¹⁷ the memoirs of former Secretary of Defence Donald Rumsfeld,¹⁸ the memoirs of former Central Command commanding officer, Tommy Franks,¹⁹ retired CIA Director George Tenet,²⁰ former Under Secretary of Defence for Policy Douglas Feith,²¹ author Sean Naylor who detailed Operation Anaconda in the spring of 2002,²² Chris Mackey (Hogan) who wrote the first detailed account of interrogation and detention operations in Afghanistan,²³ and former Taliban Ambassador to Pakistan, Abdul-Salam Zaef.²⁴ The GTMO chapter relied on policy criticism from New York University law professor Karen Greenberg,²⁵ international lawyer and professor Phillippe Sands,²⁶ former Muslim Army Chaplain at GTMO James Yee,²⁷ as well as support from retired Army Lieutenant Colonel Gordon Cucullu,²⁸ and former head military lawyer at GTMO Kyndra Rotunda.²⁹ In the Iraq chapter, books by

¹⁴ Gary Berntsen, *JAWBREAKER - The Attack on Bin Laden and Al-Qaeda: A Personal Account by the CIA's Key Field Commander*, (NYC: Crown Publishers, 2005)

¹⁵ Gary C. Schroen, *First In: An Insider's Account of How the CIA Spearheaded the War on Terror in Afghanistan*, (NYC: Presidio Press, 2005)

¹⁶ Doug Stanton, *Horse Soldiers: The Extraordinary Story of a Band of US Soldiers who Rode to Victory in Afghanistan*, (NYC: Scribner, 2010)

¹⁷ Peter Bergen, *Holy War Inc.: Inside the Secret World of Osama Bin Laden*, (NYC: Touchstone, 2002), __, *The Osama bin Laden I Know: An Oral History of al Qaeda's Leader*, (NYC: Free Press, 2006)

¹⁸ Donald Rumsfeld, *Known and Unknown: A Memoir*, (NYC: The Penguin Group, 2011)

¹⁹ Tommy R. Franks, *American Soldier*, (NYC: Harper-Collins Publishers, 2004)

²⁰ George Tenet, *At the Center of the Storm: My Years at the CIA*, (NYC: Harper Collins, 2007)

²¹ Douglas J. Feith, *War and Decision: Inside the Pentagon at the Dawn of the War on Terrorism*, (NYC: Harper Collins, 2008)

²² Sean Naylor, *Not A Good Day To Die: The Untold Story of Operation Anaconda*, (NYC: Penguin Group, 2005)

²³ Chris Mackey (Hogan) and Greg Miller, *The Interrogators: Inside the Secret War Against Al Qaeda*, (NYC: Little Brown and Company, 2004)

²⁴ Abdul-Salam Zaef, *My Life With The Taliban*, (NYC: Columbia University Press, 2010)

²⁵ Karen Greenberg, *The Least Worst Place: Guantanamo's First 100 Days*, (Oxford: Oxford University Press, 2009)

²⁶ Phillippe Sands, *Torture Team: Rumsfeld's Memo and the Betrayal of American Values*, (NYC: Palgrave Macmillan, 2008)

²⁷ James Yee, *For God and Country: Faith and Patriotism Under Fire*, (NYC: Public Affairs, 2005)

²⁸ Gordon Cucullu, *Inside GTMO: The True Story Behind The Myths of Guantanamo Bay*, (NYC: Harper Collins Publishers, 2009)

²⁹ Kyndra Miller Rotunda, *Honor Bound: Inside the Guantanamo Trials*, (Durham, NC: Carolina Academic Press, 2008)

retired Iraq expert Lieutenant Colonel Rick Francona,³⁰ former head of the Coalition Provincial Authority in Iraq Ambassador Paul Bremer,³¹ retired Lieutenant General Ricardo Sanchez who commanded US forces in Iraq when abuses at Abu Ghraib occurred,³² award winning journalist Bob Woodward,³³ retired Colonel Larry James who served in detention operations in Iraq and GTMO,³⁴ and Iraqi government official, Ali Allawi,³⁵ were of use.

The information I gathered helped me to build a base of knowledge as I narrowed my focus to the decade after 9/11. This dissertation fills the lacuna by providing a detailed historical account of detention operations in counterinsurgency-counterterrorism operations for the period between 2001 and 2011.

An understanding of the major theories of conventional and irregular warfare is essential in framing the debate on detention operations in counterinsurgency-counterterrorism operations. While almost no attention is given to the topic of detention operations in the existing theoretical literature, the overarching principles are still helpful in order to craft an appropriate detention strategy; my research helps fill this gap. Policy makers and operational planners must understand the type of conflict they are engaged in in order to minimise the amount of time spent, resources wasted, and lives lost in steps two and three of the HDC. Fewer mistakes ‘inside the wire’ reduce the insurgents’ opportunity to gain strength within the detaining power’s own prison facilities.

³⁰ Rick Francona, *Ally to Adversary: An Eyewitness Account of Iraq's Fall from Grace*, (Annapolis, MD: US Naval Institute Press, 1999)

³¹ Paul L. Bremer, *My Year in Iraq: The Struggle to Build a Future of Hope*, (NYC: Threshold Editions, 2006)

³² LTG Ricardo Sanchez, *Wiser in Battle: A Soldier's Story*, (NYC:, Harper, 2008)

³³ Bob Woodward, *Bush at War*, (NYC: Simon & Schuster, 2002), __, *Plan of Attack*, (NYC: Simon & Schuster, 2004), __, *The War Within*, (NYC: Simon & Schuster, 2008), __, *Obama's Wars*, (NYC: Simon & Schuster, 2010)

³⁴ Larry C. James, *Fixing Hell: An Army Psychologist Confronts Abu Ghraib*, (NYC: Hachette Book Group, 2008)

³⁵ Ali A. Allawi, *The Occupation of Iraq: Winning the War, Losing the Peace*, (New Haven, CT: Yale University Press, 2007)

The father of modern conventional war theory, Prussian General Carl Von Clausewitz, served from 1792 to 1831 in both the Prussian and Russian militaries. His theoretical writings on warfare, published after his death, have been studied by generations of military strategists.³⁶ Ironically, though he had been a prisoner of war for a time during his career, none of his published works discussed detention in military operations. Von Clausewitz defined war as a ‘duel on an extensive scale’,³⁷ or the ‘continuation of policy by other means’³⁸ in order to force an opponent to submit. ‘The enemy is to be reduced to submission by an act of war, then the enemy must be disarmed or put in a position where he feels he will be disarmed.’³⁹

However, Von Clausewitz did concede that the endgame is determined by politicians and not by military leaders. When examining the crafting of detention policy, as I do in this thesis, this political or strategic reality must always be kept in mind. Von Clausewitz also wrote about ‘friction’ or the ‘fog of war’ in combat and said the simplest objectives are often difficult to accomplish on the battlefield due to the presence of temporary confusion or unforeseen circumstance.⁴⁰ Observations that hold very true for the detention operation experience since 9/11 in all theatres.

Irregular warfare theory was not described by Von Clausewitz in his book *On War*, but many of his theories still apply. The Global War on Terrorism (GWOT) or Long War⁴¹ is an irregular war. Thomas X. Hammes in his book, *The Sling and the Stone*, explained that conventional wars represented the first, second, and third generations of European warfare witnessed during the age of Napoleon, World War I, and World War II.⁴² The fourth generation conflicts of today are of an irregular or

³⁶Von Clausewitz, Carl, *On War*, Anatol Rapoport, (ed.), Col. J.J. Graham (translator), (NYC: Dorsett Press, 1991), p. 17

³⁷ Ibid., p. 101

³⁸ Ibid., p. 119

³⁹ Ibid., pp. 104

⁴⁰ Ibid., pp. 164-167

⁴¹ David Kilcullen, *The Accidental Guerrilla*, (Oxford, UK: Oxford University Press, 2009), p. xvi

⁴² Thomas X. Hammes, *The Sling and the Stone*, (St. Paul, MN: MBI Publishing, 2004), pp. 16-31

asymmetric nature⁴³ and include more complex detention operations than had been seen in state-on-state conflicts.⁴⁴ The US Department of Defence (DOD) defines Irregular Warfare (IW) as:

A violent struggle among state and non-state actors for legitimacy and influence over the relevant populations. IW favours indirect and asymmetric approaches, though it may employ the full range of military and other capabilities, in order to erode an adversary's power, influence, and will. IW is a complex, messy, and ambiguous social phenomenon that does not lend itself to clean, neat, concise, or precise definition . . . IW is a form of warfare. As such, it encompasses insurgency, counterinsurgency, terrorism, and counterterrorism . . .⁴⁵

Irregular warfare includes: insurgency, counterinsurgency, unconventional warfare, terrorism and counterterrorism. But it also involves numerous other aspects. These include foreign internal defence, stabilisation, security, transition and reconstruction operations, strategic communications, psychological operations⁴⁶ (now called Military Information Support Operations). Other aspects are information operations, civil-military operations, intelligence and counterintelligence activities, and transnational criminal activities like narco-trafficking, illicit arms dealing, and illegal financial transactions that support or sustain irregular warfare. Finally, there is also a law enforcement angle focused on countering irregular adversaries.⁴⁷

Insurgency, a subset of irregular warfare, is defined as a movement aimed at the overthrow of a legitimate government through the use of subversion. It is an organised, protracted political-military struggle designed to weaken control and legitimacy of the established government or occupying power while increasing the power of the insurgent. Counterinsurgency is the military, paramilitary, political, economic, psychological, and civic actions taken by the government to defeat the insurgency. A

⁴³ *Field Manual 3-24: Counterinsurgency*, (Washington, DC: Dept. of the Army, 2006), pp. 3-18

⁴⁴ *Ibid.*, p. 208

⁴⁵ *Irregular Warfare Joint Operating Concept 1-0*, (Washington, DC: DOD, 2007), p. 12

⁴⁶ Author Unknown, 'Army psy ops gets new name,' *AP*, 2 July 2010

⁴⁷ *Irregular Warfare Joint Operating Concept 1-0*, pp. 15-16

further subset of counterinsurgency is counterguerrilla operations, which focuses on the active military element of the insurgent movement and nothing else.⁴⁸

An emerging theory of warfare since the end of WWII is lawfare. British Lieutenant Colonel A. P. Scotland who commanded the British interrogation system during WWII, described in his book, *The London Cage*, the addition of ‘legal warfare’ in future conflicts. At the end of the war, his unit was re-designated the War Crimes Investigation Unit and its mission changed from collecting intelligence for the war to gathering evidence for international war crimes tribunals. He did not approve of this turn of events and suggested that future commanders consider taking lawyers with them to battle because the interpretation of international law was not the avocation of an intelligence officer.⁴⁹ Today military units do not deploy without their operational law lawyers who help vet the legality of operations.

In 2001, US Colonel Charles Dunlap, an Air Force JAG officer at Harvard University, used the term ‘lawfare’ to describe the convergence of war and law in the conflict in the Balkans. He defined it as:

A cynical manipulation of the rule of law and the humanitarian values it represents. Rather than seeking battlefield victories, per se, challengers try to destroy the will to fight by undermining the public support that is indispensable when democracies like the US conduct military interventions . . . simply put it is the terrorist efforts to use the US legal system against us while waging acts of terror against our citizens.⁵⁰

Lawfare’s goal is to manipulate the government’s source of strength, the people, as a centre-of-gravity in order to undermine the government and destroy the symbiotic ‘trinity’ balance stressed by Von Clausewitz between the people, the government, and the military.⁵¹ Since 9/11, terrorists and their sympathisers have become adept at using

⁴⁸ *U.S. Army Counterinsurgency Operations Handbook*, p. 1-5

⁴⁹ Lt. Col. A. P. Scotland, *The London Cage*, (London, UK: Evans Brothers Ltd., 1957), p. 87

⁵⁰ Terrance Smith, ‘Terrorist Employ Lawfare,’ *Harrisburg Conservative Examiner*, 23 March 2010

⁵¹ *Ibid.*

lawfare against the US as part of their asymmetric, irregular strategy.⁵² In Afghanistan and GTMO, lawfare has been exploited by legal organisations representing detainees.⁵³

In its basest form, terrorism warfare theory is the systematic use of terror, violence, and intimidation to achieve a set objective.⁵⁴ It has been used throughout history, but for the past 50 years it has become increasingly popular among organisations unable to directly confront a superior force. It can be highly effective and very difficult to defeat. In counterinsurgency-counterterrorism operations terrorism is a key enemy tactic and must be countered with the protection of the population in mind.

David Galula, a former French Army officer, is considered the father of modern counterinsurgency doctrine. He codified counterinsurgency principles in his 1964 book *Counterinsurgency Warfare*,⁵⁵ written while he was a fellow at Harvard University. While his work is considered the classic writing of counterinsurgency theory, he failed to deal with the treatment of detainees in a counterinsurgency campaign.⁵⁶ As such, this thesis complements his seminal work. Galula stated there are four main laws applicable to counterinsurgency theory: First, the support of the population,⁵⁷ second, an understanding that support is gained through an active minority,⁵⁸ third, an understanding that support from the population is conditional,⁵⁹ fourth, an intensity of efforts and vastness of means are essential.

In today's counterinsurgency environment, David Kilcullen, an Australian Army reserve officer and well known COIN advisor to the US military, has spent years in the field researching and working in counterinsurgency environments. In 2006 as the insurgency was raging in Iraq, he wrote a paper in the *Military Review Journal* titled

⁵² Paul Rester, Author Interview, Crystal City, VA, 27 February 2009

⁵³ Mark P. Denbeaux and Jonathan Hafetz(ed.), *The Guantanamo Lawyers*,(NYC,NYU Press, 2009), p. 5

⁵⁴ Margery Berube (ed), *The American Heritage Dictionary*, (Boston, MA: Houghton Mifflin Company, 1985), pp. 1255-1256

⁵⁵ David Galula, *Counterinsurgency Warfare: Theory and Practice*, (Westport, CT: Praeger Security International, 2006)

⁵⁶ David Galula, *Counterinsurgency Warfare*, (Westport, CT: Praeger Security, 2006), pp. 6-7

⁵⁷ Ibid. p. 52

⁵⁸ Ibid. p. 53

⁵⁹ Ibid. pp. 54-55

‘28 key points for company level units’ in a counterinsurgency.⁶⁰ (Appendix C) This article was widely read and the principles were applied at a time when this knowledge was badly needed but the article failed to address detention.

In 2009, Kilcullen published his ground breaking book, *The Accidental Guerrilla* but it likewise provided no focus on detention operations. In the book he detailed a new paradigm to look at the current threat environment through and summarized his thinking of the way the enemy fights. Traditionally, counterinsurgency was localized and focused on the overthrow of a local government. The threat environment today is much more global than the environment envisioned by Galula.⁶¹ The ideology of the radical Islamic Salafi Takfiri movement⁶² subscribed to by Al-Qaeda has widened the playing field from focusing on the ‘near enemy,’ national governments in the Islamic world, to focusing on the ‘far enemy,’ the US both at home and abroad.⁶³ In essence, Kilcullen says, ‘we are fighting many small wars amidst large global confrontations’.⁶⁴

Kilcullen described an ‘accidental guerrilla syndrome’ exploited by Al-Qaeda and local allies.⁶⁵ In this strategy, Phase one is the infection stage, phase two is the contagion stage and phase three is the intervention stage. During this stage outside forces take action against the radical groups directly or through the use of a proxy. This is very relevant to this thesis as it is during this stage that the HDC and the accidental guerrilla syndrome intersect. (Appendix D) If detention operations are not conducted properly it can exacerbate the situation and facilitate the growth of many more accidental guerrillas in the next and final phase.

⁶⁰ David Kilcullen, ‘Twenty Eight Articles’, *Military Review*, March 2006

⁶¹ Kilcullen, *The Accidental Guerrilla*, (Oxford, UK: Oxford University Press, 2009), pp. xiv - xix

⁶² Fawaz Gerges, *Journey of the Jihadist*, (NYC: Harcourt Books, 2006), pp. 2, 274

⁶³ Gerges, *The Far Enemy*, (NYC: Cambridge University Press, 2005), pp. 119-121

⁶⁴ Kilcullen, *The Accidental Guerrilla: Fighting Small Wars in the Midst of a Big One*, p. xxviii

⁶⁵ Ibid., 28

In Iraq and Afghanistan this was clearly the case as will be shown in the case studies in this dissertation. Phase four is the final stage of the syndrome. Locals react negatively to outside intervention and many become accidental guerrillas. Not because they like the Al-Qaeda ideology and presence but because they do not like the foreign presence.⁶⁶

Some of the best historical examples, good and bad, dealing with detention operations in counterinsurgency-counterterrorism come from the British military experience in South Africa during the Boer Wars 1880 to 1881 and 1899 to 1902;⁶⁷ Palestine, between 1936 to 1939 and 1945 to 1948;⁶⁸ the Malayan Emergency 1950 to 1960;⁶⁹ Northern Ireland from 1969 to 2007;⁷⁰ and Oman from 1970 to 1976.⁷¹ Today many think that the British always applied the 'soft' approach they are currently associated with. In reality their approach evolved over time after many hard lessons learned. The French also provide some valuable lessons from their experiences in

⁶⁶ Ibid., pp. 35-38

⁶⁷ Michael Foley, *Prisoners of the British*, (Kent, UK: Bank House Books, 2009), Tim Jeal, *Baden-Powell: Founder of the Boy Scouts*, (New Haven, CT: Yale University Press), Byron Farwell, *The Great Anglo-Boer War*, (NYC: W. W. Norton & Company, 1990), Thomas Pakenham, *The Boer War*, (London, UK: Abacus, 1991)

⁶⁸ Mark Lehenbauer, *Orde Wingate and the British Internal Security Strategy During the Arab Rebellion in Palestine, 1936-1939*, (Ft. Leavenworth, KS: Combat Studies Institute Press, 2012), Ted Swedenburg, *Memories Of Revolt: 1936-1939 Rebellion In The Palestinian Past*, (Fayetteville, AR: University of Arkansas Press, 2003), David A. Charters, *The British Army and Jewish Insurgency in Palestine, 1945-47*, (London, UK: Palgrave Macmillan, 1989), Bruce Hoffman, *The failure of British military strategy within Palestine, 1939-1947*, (Ramat-Gan, Israel: Bar-Ilan University Press, 1983)

⁶⁹ John A. Nagle, *Learning to Eat Soup with A Knife: Counterinsurgency Lessons from Malaya and Vietnam*, (Chicago, IL: The University of Chicago Press, 2005), Robert Jackson, *The Malayan Emergency*, (South Yorkshire, UK: Pen and Sword, 2008), Richard L Clutterbuck, *The Long, Long War: Counterinsurgency in Malaya and Vietnam*, (Westport, CT: Praeger, 1966), LTC James R. Bortree, USAF, *Information Operations During The Malayan Emergency*, (Monterey, CA: Naval Post Graduate School, 2006)

⁷⁰ John Bew, Martyn Frampton, Inigo Gurruchaga, *Talking to Terrorists: Making Peace in Northern Ireland and the Basque Country*, (NYC: Columbia University Press, 2009), Brian Jackson, A., 'Counterinsurgency Intelligence in a Long War: The British Experience in Northern Ireland', *Military Review*, January-February 2007, IRA Leadership Statement, 'The IRA's full statement, in which its leadership ordered members to stop the armed campaign,' *BBC*, 28 July 2005, Tim Pat Coogan, *The Troubles: Ireland's Ordeal and the Search for Peace*, (NYC: Palgrave Macmillan, 2002)

⁷¹ Ian Gardiner, *In the Service of the Sultan: A First Hand Account of the Dhofar Insurgency*, (South Yorkshire, UK: Pen & Sword Books, 2008), Tony Jeapes, *SAS Secret War: Operation Storm in the Middle East*, (London, UK: Greenhill Books, 2005), David C. Arkless, *The Secret War: Dhofar, 1971-72*, (London, UK: William Kimber & Co Ltd, 1990), Andrew Higgins, *With the Sas And Other Animals: A Vet's Experiences During the Dhofar War 1974*, (South Yorkshire, UK: Pen and sword Publishing, 2011)

Algeria from 1954 to 1962.⁷² The US experienced a rarely studied counterinsurgency in the Philippines from 1898 to 1902 also worthy of study.⁷³

Since 9/11, there have been two major schools of thought, and one lesser one, on the subject of the detention, classification, and treatment of detainees. Of the two larger, the first favours an intelligence-collection approach as the primary method in dealing with detainees. Supporters of this school include John Yoo, Kyndra Miller Rotunda, Jeff Azarva, Jeff Bovarnick, Larry James, and Doug Pryer.⁷⁴ The other school advocates judicial prosecution or designation as a prisoner of war under the Geneva Conventions as the upmost objective in detention operations. Supporters of this camp are Karen Greenberg, Phil Sands, Joseph Margulies, Mark Danner, and Michael Haas.⁷⁵ The smaller school supports a hybrid option to create a new national security court system that addresses the concerns of both camps.⁷⁶ Proponents of this camp are Glen

⁷² Roger Trinquier, *Modern Warfare: A French View of Counterinsurgency*, (Westport, CT: Praeger Security International, 2006), Alistair Horne, *A Savage War of Peace: Algeria 1954-1962*, (NYC: NYRB Classics, 2006), Jennifer E. Sessions, *By Sword and Plow: France and the Conquest of Algeria*, (Ithaca, NY: Cornell University Press, 2011), Alf Andrew Heggoy, *Insurgency and Counter-insurgency in Algeria*, (Bloomington, IN: Indiana University Press, 1972)

⁷³ Brian M. Linn, *The Philippine War: 1899-1902*, (Lawrence, K.S.: University of Kansas Press, 2000), ___, *The U.S. Army and Counterinsurgency in the Philippine War, 1899-1902*, (Chapel Hill, NC: The University of North Carolina, 1989), Napolean D. Valeriano, Charles T.R. Bohannon, *Counter-Guerilla Operations: The Philippines Experience*, (Westport, CT: Praeger Security International, 2006)

⁷⁴ John Yoo, *Crisis and Command: A History of Executive Power from George Washington to George Bush*, (NYC: Kaplan Publishing, 2009), ___, *The Powers of War and Peace: The Constitution and Foreign Affairs after 9/11*, (Chicago, IL: University of Chicago Press, 2005), ___, *War by Other Means: An Insider's Account of the War on Terror*, (NYC: Atlantic Monthly Press, 2006), Kyndra Miller Rotunda, *Honor Bound: Inside the Guantanamo Trials*, (Durham, NC: Carolina Academic Press, 2008), Jeffrey Azarva, 'Is U.S. Detention Policy in Iraq Working?', *Middle East Quarterly*, Winter 2009, Jeff A. Bovarnick, 'Detainee Review Boards in Afghanistan: From Strategic Liability to Legitimacy,' *The Army Lawyer*, 1 June 2010, Larry C. James, *Fixing Hell: An Army Psychologist Confronts Abu Ghraib*, (NYC: Hachette Book Group, 2008), Douglas A. Pryer, *The Fight for the High Ground: The U.S. Army and Interrogation During Operation Iraqi Freedom I, May 2003 – April 2004*, (Fort Leavenworth, KS: US Army Command and General Staff College, 2009)

⁷⁵ Karen Greenberg, *The Least Worst Place: Guantanamo's First 100 Days*, (Oxford: Oxford University Press, 2009), ___, *The Torture Debate in America*, (NYC: Cambridge University Press, 2006), ___, *The Torture Papers: The Road to Abu Ghraib*, (Cambridge, UK: Cambridge University Press, 2005), Phillippe Sands, *Torture Team: Rumsfeld's Memo and the Betrayal of American Values*, (NYC: Palgrave Macmillan, 2008), Joseph Margulies, *Guantanamo and the Abuse of Presidential Power*, (NYC: Simon & Schuster, 2007), Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror*, (NYC: NYRB, 2004), Michael Haas, *George W. Bush, War Criminal?: The Bush Administration's Liability for 269 War Crimes*, (Westport, CT: Praeger Publishers, 2009)

⁷⁶ Glenn Sulmasy, *The National Security Court System: A Natural Evolution of Justice in an Age of Terror*, (Oxford, UK: Oxford University Press, 2009), Jack L. Goldsmith And Neal Katyal, 'The Terrorists' Court', *NYT*, 11 July 2007, Benjamin Wittes, *Law and the Long War: The Future of Justice in the Age of Terror*, (NYC: The Penguin Press, 2008), Andrew C. McCarthy, *Willful Blindness: A Memoir*

Sulmasy, Ben Wittes, Andrew McCarthy, Philip Bobbitt, and Neal Katyal and Jack Goldsmith. The debate has been rancorous and fractious internationally and in American politics; the closing of GTMO became a focus of the 2008 presidential election.

The intelligence-collection school-of-thought focuses on the primacy of gathering tactical and strategic intelligence to disassemble insurgent/terror networks and save lives immediately. In this approach, detainees are classified and questioned using approved interrogation techniques, but the intelligence collected may not be admissible in a US court of law. Under this system, detainees receive justice in military tribunals or commissions as opposed to the American judicial system. Unhampered, military justice is typically much swifter and less costly than criminal trials, but one drawback is that detainees may ultimately be released when the military mission is over. Opponents critical of this approach argue that this system denies detainees their basic human rights.

One of the main supporters of this camp is John Yoo, the former deputy assistant attorney general in the Office of Legal Counsel of the Justice department for President George W. Bush. Yoo wrote several books propounding this argument: In *War by other Means*,⁷⁷ he set out to explain to the public what the Bush administration went through in order to protect the nation after 9/11 and why they enacted certain laws such as the military commissions which have long been used throughout US history. In *Crisis and Command*,⁷⁸ Yoo helped clarify for my research the scope of presidential power historically. While his books focussed on the policy process my research focussed on the operational application of the policies he advocated for. Kyndra Miller

of the Jihad, (NYC: Encounter Books, 2008), Philip Bobbitt, *Terror and Consent: The Wars for the Twenty-First Century*, (NYC: Alfred A Knopf, 2008)

⁷⁷ John Yoo, *War by Other Means: An Insider's Account of the War on Terror*, (NYC: Atlantic Monthly Press, 2006)

⁷⁸ John Yoo, *Crisis and Command: A History of Executive Power from George Washington to George Bush*, (NYC: Kaplan Publishing, 2009)

Rotunda' who wrote *Honor Bound: Inside the Guantanamo Trials*,⁷⁹ provided information for my GTMO case study regarding how the military commissions work and what life is like inside the GTMO prison; she argues that the process is much improved and the detainees are well cared for which supports my findings related to the HDC.

Jeffrey Azarva published an article in the *Middle East Quarterly* journal in 2009 titled 'Is US Detention Policy in Iraq Working?'⁸⁰ Here he laid out the successes of the new coalition prison system based on the new programme put in place by Iraq Detention Task Force 134 commander, Major General Doug Stone. This information was helpful as it supported my thesis that detention is a liability when done poorly but it also showed it could become an asset if done correctly. Army lawyer Lieutenant Colonel Jeff Bovarnick wrote 'Detainee Review Boards in Afghanistan: From Strategic Liability to Legitimacy',⁸¹ a detailed article published in *The Army Lawyer Journal* about the new processes in place to assist in evaluating detainees for release or further detention. Little information had been made public about these boards previously and his article shed the most detailed light on the whole process and assisted my research as I worked to understand the review board process.

Colonel Larry James wrote *Fixing Hell: An Army Psychologist Confronts Abu Ghraib*,⁸² about his initial tour at GTMO and the follow on assignment to Abu Ghraib to help fix the challenges there. James argues the main lesson from Abu Ghraib was that good leaders must be present all the time otherwise bad things will happen. His supposition matches with one of my main recommendations that the correct leadership be selected for detention operations.

⁷⁹ Kyndra Miller Rotunda, *Honor Bound: Inside the Guantanamo Trials*, (Durham, NC: Carolina Academic Press, 2008)

⁸⁰ Jeffrey Azarva, 'Is U.S. Detention Policy in Iraq Working?', *Middle East Quarterly*, Winter 2009

⁸¹ Jeff A. Bovarnick, 'Detainee Review Boards in Afghanistan: From Strategic Liability to Legitimacy,' *The Army Lawyer*, 1 June 2010

⁸² Larry C. James, *Fixing Hell: An Army Psychologist Confronts Abu Ghraib*, (NYC: Hachette Book Group, 2008)

Major Doug Pryer wrote his master's thesis on interrogation titled, *The Fight for the High ground: The US Army and Interrogation During Operation Iraqi Freedom I, May 2003-April 2004*, which shed detailed light on the first year of the war's detention in counterinsurgency operations. Specifically he detailed the poor resourcing and failure to plan for an extended detention operation in Iraq; this supported one of my main recommendations to have a deliberate long term plan for detention operations. All of these writings were helpful in my research that tied this all together for the period adding in new insights from other key detention actors to paint the larger picture.

The judicial-Geneva Conventions school-of-thought views detainees as innocent victims of a corrupt process, as criminals in violation of US law or as prisoners of war under the Geneva Conventions. Proponents emphasise a strict interpretation of keeping detainees under the Geneva Conventions whether they qualify or not and giving them prisoner of war status or building a legal case in order to prosecute detainees according to US terror statutes. They challenge the legality of the entire US military tribunal system and favour the clarity, transparency, and longevity of the US criminal justice system or the Geneva Conventions processes; either one will grant the detainee *habeas corpus*, a basic human right.

This is an idealist rather than a realist approach. It places legal rights over intelligence gathering and arguably national security. It is costly, time consuming, and has proven dangerous for prosecutors and officers of the court involved in trying these cases. But there are many who believe that this is the only legitimate approach.

Karen Greenberg, Executive Director of the Centre for Law and Security at the New York University Law School has written several books supporting this argument. Her book *The Least Worst Place: Guantanamo's First 100 Days*,⁸³ included some important details of the step by step creation of the initial GTMO detention task force

⁸³ Karen Greenberg, *The Least Worst Place: Guantanamo's First 100 Days*, (Oxford: Oxford University Press, 2009)

160. Most important she detailed the interactions with the US Southern Command and the dysfunction there as GTMO was being stood up. However, looking at the list of individuals she interviewed it is apparent that she missed too many of the key players involved to make many of the assumptions she does. For example, she asserts that Brigadier General Mike Lehnert was correct in his strategy to try and label the detainees prisoners of war under the Geneva Conventions and that Major General Michael Dunlavey was wrong to collect intelligence under the new Pentagon guidance and not recognize the detainees under the conventions but rather as enemy combatants. This dissertation challenges these claims by adding additional information from other sources that show General Lehnert hampered the intelligence collection mission of the GTMO task force and the detainees were well cared for and received a level of treatment as good or better as the soldiers who were guarding them.

Greenberg also edited two other books. *The Torture Papers: The Road to Abu Ghraib*,⁸⁴ that laid out many of the primary source documents that led to the detention policies of the Bush administration. They are the same documents that Yoo and his colleagues looked at and worked on but each came to different conclusions based on the school of thought they used to view the policy making process through. My research looked deeper at operational sources. In her book *The Torture Debate in America*,⁸⁵ she brings together a series of articles on detention, interrogation, and the rule of law by many who opposed the Bush administration policies. The book is a good reader of this camps position.

A similar focus is at the heart of Phillippe Sands book *Torture Team: Rumsfeld's MEMO and the Betrayal of American Values*.⁸⁶ Here Sands, like Greenberg in, *The Least Worst Place: Guantanamo's First 100 Days*, attempts to reconstruct the

⁸⁴ ___, *The Torture Papers: The Road to Abu Ghraib*, (Cambridge, UK: Cambridge University Press, 2005)

⁸⁵ ___, *The Torture Debate in America*, (NYC: Cambridge University Press, 2006)

⁸⁶ Phillippe Sands, *Torture Team: Rumsfeld's Memo and the Betrayal of American Values*, (NYC: Palgrave Macmillan, 2008)

step by step policy moves made by the Bush administration in regards to the treatment and classification of detainees. He focussed less on the operational side of the detention task force in GTMO and more on the decision making of the key policy makers. His world view was that what was taking place was wrong under international law and he wanted to prove how and why it happened. His work compliments Greenberg's and is a good resource to understand this camps point of view. Like Greenberg, he laid out the dysfunction at the US Southern Command which had operational responsibility for the GTMO detention task force. This very important piece of information is key in understanding how the policy made at the national level flowed down to the command at GTMO.

In *Guantanamo and the Abuse of Presidential Power*,⁸⁷ Joseph Margulies builds on the research of Greenberg and Sands to show the US detention system is illegal and needs reform. His work as an attorney representing GTMO detainee Mamdouh Habib, an Egyptian born, Australian detainee, helped shape his viewpoint. He also spent time in Iraq during the worst days of the insurgency. While his book has no earth shattering revelations it reiterated the viewpoint of this ideological camp.

In *Torture and Truth: America, Abu Ghraib, and the War on Terror*,⁸⁸ Danner, like Greenberg and Sands, focused on the trail of Bush administration documents dealing with detention and interrogation. He adds nothing new to the debate other than to show one more individual who is opposed to the Bush era policies. Lastly, Michael Haas in, *George W. Bush, War Criminal?: The Bush Administration's Liability for 269 War Crimes*, lays out this camps most detailed argument against the Bush administration. Yoo, as my research also shows, would disagree with the legal arguments posed nevertheless to those looking at the entire debate one will find the

⁸⁷ Joseph Margulies, *Guantanamo and the Abuse of Presidential Power*, (NYC: Simon & Schuster, 2007)

⁸⁸ Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror*, (NYC: NYRB, 2004)

book of value. The value in this source is that it provided yet again another viewpoint from this camp to understand their interpretation of the law as it relates to detention.

Glen Sulmasy, author of *The National Security Court System: A Natural Evolution of Justice in the Age of Terror*,⁸⁹ represents the third, albeit small school of thought. He propounds the hybrid option of the two main schools of thought to create a new national security court system that allows for both trials and for the collection of intelligence. He argues that the US court system is not well enough equipped to handle terrorism cases while military commissions have been very ineffective. As such an alternative to both is necessary. Benjamin Wittes, a fellow with the Brookings Institute agrees and wrote in *Law and the Long War: The Future of Justice in the Age of Terror*,⁹⁰ that Congress must act and create new laws to meet the needs for terrorism cases that cannot currently be met under the existing system.

Former terrorism federal prosecutor Andrew McCarthy, also supports this approach. In his book *Willful Blindness: A memoir of the Jihad*,⁹¹ he details the challenges of obtaining convictions of terrorists under the current system. Current Obama appointee and US deputy solicitor general Neal Katyal⁹² also favours a new system where terrorists who do not fall under the Geneva Conventions or our domestic laws can be detained and tried. Finally, Philip Bobbitt in his book *Terror and Consent: The Wars for the Twenty-First Century*,⁹³ argues that there must be a way to bring the law and military strategy together going forward or we stand to be defeated in future conflicts. Having a national security court where intelligence detainees can be tried under laws that protect classified sources and methods yet upholds the rule of law

⁸⁹ Glenn Sulmasy, *The National Security Court System: A Natural Evolution of Justice in an Age of Terror*, (Oxford, UK: Oxford University Press, 2009)

⁹⁰ Benjamin Wittes, *Law and the Long War: The Future of Justice in the Age of Terror*, (NYC: The Penguin Press, 2008)

⁹¹ Andrew C. McCarthy, *Willful Blindness: A Memoir of the Jihad*, (NYC: Encounter Books, 2008)

⁹² Jack L. Goldsmith and Neal Katyal, 'The Terrorists' Court', *NYT*, 11 July 2007

⁹³ Philip Bobbitt, *Terror and Consent: The Wars for the Twenty-First Century*, (NYC: Alfred A Knopf, 2008)

supports my main thesis to conduct detention operations properly in order to support the broader goal of prosecuting terror detainees.

Limited though it is, the secondary literature on detention and interrogation operations has provided a useful background for this dissertation. Some of the most useful secondary sources came from news reports from in-country. Articles from the *Washington Independent*, the *Wall Street Journal*, the *BBC*, *Newsweek*, *National Public Radio*, the *Independent*, and others provided essential insights into the detention story. These articles provided a counterbalance to the official US military press releases and documents.

As already discussed, the subject of detention operations arouses much passion and great debate. All those who address it, including this author, face the possibility of being accused of bias by those with whom they disagree. However, throughout this thesis I have looked to be as objective as possible. The one area where there may appear to be obvious bias is in my choice of interviewees. Admittedly the vast majority of my 76 interviews represent the American official government/military position. However, the reason for this is not because I have chosen to ignore those holding an opposing view. The reason is a lack of access to primary opposing actors in the battlefield and the availability of being able to meet with busy opposing sources.

The main primary sources were interviews with participants who shaped policy or were involved with US detention policy and operations from WWII to the present. Interviews with three Deputy Assistant Secretaries of Defence (DASD) for Detainee Affairs and the first Iraq detainee policy official were crucial to clarifying the emergence of current US detention policy. Interviews with several general officers over key detention operations, including Joint (inter-service) Task Force (JTF)-170 and JTF-GTMO commanding officer General Michael Dunlavey and JTF-435 Iraq detention commanding officer General Douglas Stone were also crucial because of where and

when they served. Retired soldiers including Vietnam War Medal of Honour recipient Robert Howard, US Army and Defence Intelligence Agency veteran Paul Rester, Central Intelligence Agency (CIA) Operations Officers Robert Baer and Antonio, helped complete the historical picture.

Andy Worthington, a GTMO detainee advocate, provided criticism of US detention operations. I corresponded with Philippe Sands, author of *Torture Team*, but he could never work me into his schedule. Mathew Waxman, the first Deputy Assistant Secretary of Defence for Detainee Affairs for the Bush Administration and a critic of many of the Executive office policies on detainees, was interviewed and he provided detailed information regarding his struggle against high level Bush administration appointees who did not want to officially apply the Geneva Convention common article three standard of humane treatment to the detainees. Other critics were on my extensive list of potential interviews but none came to fruition. Instead I relied on their published works and articles.

I also had no opportunity to talk to detainees. Other than several accounts by a handful of former GTMO detainees, Murat Kurnaz,⁹⁴ Moazzam Begg,⁹⁵ and Abdul-Salam Zaef,⁹⁶ there are very few authenticated first-hand accounts published thus far. As more detainees are released and additional government documents are declassified, more data will become available for future research. Another obstacle to the gathering of primary information for my research was my limited access to the battlefield and the Afghan and Iraqi populations affected by US detention policy and operations.

⁹⁴ Murat Kurnaz, *Five Years of My Life: An Innocent Man In Guantanamo*, (NYC: Palgrave Macmillan, 2008)

⁹⁵ Moazzam Begg, *Enemy Combatant: My Imprisonment at Guantanamo, Bagram, and Kandahar*, (London: The New Press, 2006)

⁹⁶ Abdul-Salam Zaef, *My Life With The Taliban*, (NYC: Columbia University Press, 2010)

Much of their views are found in secondary sources⁹⁷, but I did not do any social science fieldwork or data collection from among indigenous populations in warzones. My focus from the outset was to examine the issue from the perspective of US policymakers and detention operators. My goal was to provide an accurate picture using the historical approach so that future actors will understand the HDC and avoid becoming mired in mistakes that are devastating to their campaign objectives.

In addition to interviews, this study reviewed hundreds of government documents available to the public via various archives and organisations who requested them under the Freedom of Information Act. These comprised executive orders, correspondence between key policy makers, detention studies, memorandums, and investigations. The US Department of Defence Armed Forces Press Service releases filled in gaps in the detention saga not covered by traditional media outlets.

Another valuable resource of historical detention documentation was the Library of Congress, where primary source documents from George Washington, Thomas Jefferson, and Abraham Lincoln were recently transcribed and released. These letters provided details of the birth of US detention policy and provided insight into the maturation of prisoner protocols. Additional documents relating to detention policy during WWII also provided useable background data.

Structure

This dissertation is divided into five chapters; the introduction, conclusion, and three core case study chapters. Each case study is broken down along the phases of the HDC

⁹⁷ Jim Krane, 'Amnesty Criticizes U.S. Interrogations,' *AP*, 30 June 2003, Doug Sample, 'Iraqis Coming Forward With Information Since Saddam's Capture', *AFPS*, 14 January 2004, Ernesto Londono and Joshua Partlow, 'Afghan prison an insurgent breeding ground,' *Washington Post*, 6 March 2011, Maria Yager, 'Two former detainees released during Logar Shura,' *Black Anthem News*, 26 September 2010, Tim Golden, 'In U.S. Report, Brutal Details of 2 Afghan Inmates' Deaths,' *New York Times*, 20 May 2005, Tim Golden and Eric Schmitt, 'A Growing Afghan Prison Rivals Bleak Guantánamo,' *New York Times*, 26 February 2006, Author Unknown, 'Detainees in Afghanistan want to sue for release', *AP*, 7 January 2009, Author Unknown, 'Taliban say Guantanamo closure "positive step"', *Reuters*, 27 January 2009, Wilber, Del Quentin, 'A Plea to Obama from Father of Detainee', *WP*, 8 April 2009, Author Unknown, 'Taliban Condemn U.S. Bagram Prison Handover', *Reuters*, 13 January 2010

and mostly unfolds chronologically as per the historical method. The Afghanistan case study chapter, examines US detention operations in Afghanistan between September 2001 (9/11) and December 2011. It covers pre-9/11 and all Department of Defence Operation Enduring Freedom designated phases that include the start of battlefield detention operations to the creation of long term theatre holding facilities.

The GTMO case study chapter examines detention operations from December 2001 through December 2011. It includes a brief history of the US Naval base, a description of the standing up of JTFs 160 and 170 and their eventual consolidation into one JTF, and accounts of the initial Afghan war OEF phases that affected GTMO through detainee transfers and detailed the command tenures of the 11 general officers responsible for detention operations at GTMO as they passed through the phases of the HDC.

The Iraq case study chapter examines detention operations from March 2003 to December 2011. It maps the tenures of the primary detention commanders who served through the five phases of the HDC. Because the Iraq conflict has ended, it has advanced to the fifth HDC phase. The chapter sets the historical context before the launch of Operation Iraqi Freedom (OIF) and then describes detention operations through all six operational phases of OIF and the final mission Operation New Dawn, which began 1 September 2010 when President Barak Obama declared major combat operations were over.

The dissertation concludes with a chapter on major lessons learned from the three case studies and provides recommendations for future planners, leaders, and policy makers to consider.

Summary

Getting detention operations right from the start of a military operation is crucial to the success of the operation. If it is done incorrectly then detention operations in

counterinsurgency-counterterrorism operations will become a liability to the overall success of the campaign. The HDC is a model that is of value in looking at the detention lessons learned of past wars as well as organizing the phases of detention operations in an on-going conflict.

This dissertation's contribution to the field is the fact it is the first comprehensive examination of detention operations in a counterinsurgency-counterterrorism operation for the period 2001 to 2011. The current study contributes to the body of knowledge vital to the retentiveness of US detention history and thus, progress in the development of a cohesive detainee policy and productive operations. It attempts to enrich the accounts and lessons learned as they are catalogued by calling attention to the HDC and warning against the evident tendency of the sixth phase (when all is forgotten during peacetime).

Finally, this dissertation hopes to underline the importance of crafting policy that reflects the advances that can be made by overcoming challenges of the past. The US will surely face detention crises in future conflicts and may avoid grave errors by learning from the historical record. In the final account there is no escaping the fact that US policymakers, operational planners, and military personnel must '[l]earn from the past, prepare for the future, [and] live in the present'.⁹⁸ This dissertation, by addressing an important but previously under-examined subject, will hopefully form a contribution to the literature that can make this not only possible but likely.

⁹⁸ Thomas S. Monson, 'Treasure of Eternal Value', *Ensign*, Apr. 2008, 4–9

Afghanistan Case Study

Detention, if not done properly, can actually harm the effort. We are a learning organization . . . we believe transparency is certainly going to help the effort, and increase the credibility of the whole process.

- CJIATF-435 Deputy Commander Brigadier General Mark Martins⁹⁹

It is essential to who we are as a fighting force that we get [detainee treatment] right.

- Chairman of the Joint Chiefs of Staff Admiral Michael Mullen¹⁰⁰

Introduction

US involvement in detention operations in Afghanistan began in October 2001 and thus far has followed the first four phases of the HDC. In the first phase, conflict broke out when Al-Qaeda attacked the US on 9/11 and the first Al-Qaeda and Taliban prisoners were captured when the US invaded Afghanistan. War planners and policy makers were ill prepared for the paradigm shift in detention operations that emerged as part of a counterterrorism kill-capture programme. The ensuing debate focused on detainee classification, rights, and treatment under international law. Furthermore, there was little thought for holding detainees long term as the US military and its allies scrambled to assemble the resources needed to detain, care for, and interrogate them. Initial holding facilities in Bagram and Kandahar were inadequate for large numbers of detainees and they were quickly overwhelmed.

In phase two, mistakes were made in the detainee handling and incarceration process. When prisoners were transported from their point of capture to the rear, there were inadequate facilities, insufficient numbers of translators and interrogators and they were not adequately segregated. Lack of trained detention personnel, proper oversight,

⁹⁹ Author Unknown, 'US unveils extended Bagram prison,' *Al Jazeera*, 16 November 2009

¹⁰⁰ Eric Schmitt, 'Pentagon Seeks to Overhaul Prisons in Afghanistan,' *NYT*, 19 July 2009

and confusion about detainee procedural policy led to the deaths of several detainees and US government agents; these deaths were a catalyst for change.

In phase three of the HDC, the US began to correct problems in detainee handling and policy, and US detention facilities were improved to house a greater number of prisoners. The strategic long term holding facility at GTMO was commissioned with the intention of accommodating detainees with the highest intelligence value from the Afghanistan theatre. Legal debate over classification and treatment of detainees continued in Congress, the executive branch, and the courts. The Abu Ghraib prisoner abuse scandal in Iraq and the investigations that followed spurred reforms in Afghanistan and other US detention sites and are discussed at length in the chapters on Iraq and GTMO. Phase four operated simultaneously with phase three as detainees were reintegrated back into their home communities first under a US release program and finally under an Afghan government sponsored program.

Detention operations improved slowly until summer 2009, when recommendations from newly retired Marine General Douglas Stone were implemented. These reforms dramatically alleviated the rapidly deteriorating Afghan prison system and called for the creation of a new task force (TF) that centralised all US detention operations. The new JTF-435 paved the way for establishing a more effective detention process and improved rule of law in Afghanistan. The US projected a turnover of detention operations to the Afghans in January 2011 that partially occurred.

Historical Context

On 9/11, Special Agent Wong was on duty in New York City when American Airlines Flight 11 hit the North Tower of the WTC at 8:46 AM. Initially, he assumed it was an accident. When he arrived on the scene, he thought the National Transportation Safety Board was in charge, but the New York Fire Department had set up a command post

and was running the operation. He offered his assistance and waited in the corner of the command centre.¹⁰¹

When United Airlines Flight 175 hit the South Tower at 9:03 AM, Wong heard and felt the impact. A fireman staggered into the centre and said the other tower had been hit. In an instant, Wong realised the country was at war. He phoned FBI headquarters in Washington, DC and learned at least two other planes were unaccounted for.¹⁰² Within the hour, Wong spoke briefly with O'Neill in the lobby of the North Tower. O'Neill was on his cell phone with Frances Townsend, a former Justice Department official who would eventually become the Homeland Security Advisor to President George W. Bush.¹⁰³ Wong was one of the last people to see O'Neill alive.¹⁰⁴ After chasing Bin Laden for six years, O'Neill died in the South Tower; New York Police Department officers found his body 21 September.¹⁰⁵

When President Bush learned of the attacks, he determined the US would fight those responsible.¹⁰⁶ He received the news from Chief of Staff Andrew Card, in front of a group of elementary school children and reporters in Sarasota, Florida.¹⁰⁷ On 14 September, Bush visited the WTC site. He was moved by the destruction and the raw emotion of the rescue workers. In a watershed moment of his presidency, he stood on a burned out fire truck to speak to the workers. As he yelled into a bullhorn his message was swallowed up by the vastness of the rubble. Several shouted that they couldn't hear him. Bush responded: 'I can hear you. The rest of the world hears you. And the people who knocked these buildings down will hear all of us soon'!¹⁰⁸ For hours, he met with families of victims who still hoped their loved ones would come out of the rubble alive. His determination to act deepened and the understanding that this would be the

¹⁰¹ Wong Interview.

¹⁰² Ibid.

¹⁰³ Weiss, p. 209

¹⁰⁴ Wong Interview.

¹⁰⁵ Murray, pp. 371, 375-376, 382

¹⁰⁶ Bob Woodward, *Bush at War*, (NYC: Simon & Schuster, 2002), p. 15

¹⁰⁷ Jill Serjeant, 'Bush explains slow reaction to September 11 attacks,' *Reuters*, 28 July 2011

¹⁰⁸ Woodward, pp. 69-72

focus of his presidency began to sink in. Of the terrorists, he said: ‘the doctrine is, if you harbour them, feed them, house them, you’re just as guilty, and you will be held to account’.¹⁰⁹ He decided the war would be fought on many fronts including: intelligence, financial, and diplomatic, as well as by the military.

US law enforcement and the intelligence community were caught unawares and shortly would be at odds over what approaches were best suited to respond. Wong said: ‘if, pre-9/11, it was suggested terrorists could “hijack airplanes with box cutters and fly them into the WTC”, we would have just laughed. We would’ve said, “what are you nuts”? But yet somehow they thought of it. They were able to come up with a plan’.¹¹⁰ Reportedly, even Bin Laden was surprised the towers had collapsed; he expected only the top floors would come down.¹¹¹

Former Soviet soldiers were some of the first to comment on the imminent combat the US was about to undertake. The Soviet’s spent a decade in Afghanistan fighting a tough, determined, and elusive enemy. Almost 15,000 Soviet soldiers were killed in the conflict that began in late 1979, and hundreds of thousands were wounded.¹¹² Veteran Alexei Parfyonov said he understood Americans’ anger and eagerness to avenge the attacks of 9/11, but warned: ‘America now may think they can defeat anyone, but when the first coffins arrive in America, they will lose their arrogance’.¹¹³

Lester Grau, an expert on Soviet tactics and strategy in Afghanistan, speculated the Soviet Policy terrorised the people instead of winning them over. Soviet soldiers were discouraged from interacting with local Afghans, which further isolated the two peoples. During combat operations, the Soviets launched artillery on villages with no

¹⁰⁹ Ibid., p. 73

¹¹⁰ Wong Interview.

¹¹¹ Toby Harnden, ‘Bin Laden Didn’t Expect New York Towers to Fall,’ *Telegraph*, 10 December 2001

¹¹² Anna Badkhen, ‘Advice to U.S. – Don’t go there: Soviet veterans talk about Afghanistan,’ *San Francisco Chronicle*, 25 September 2001

¹¹³ Ibid.

warning. Most of what they did seemed to harden the resolve of the resistance much like the actions of the British when they fought the colonists in the American Revolutionary War.¹¹⁴

Before the Russians, the British suffered the greatest humiliation in the history of their Empire in Afghanistan in 1842.¹¹⁵ Even Alexander the Great's military struggled to subdue the Afghan tribes in 327 BC.¹¹⁶ Afghanistan's reputation as 'the graveyard of empires' was richly deserved.¹¹⁷

HDC Phase I: The Conflict Starts and Detainees Are Captured

On 9/11, shortly after what Al-Qaeda called 'the planes'¹¹⁸ operation hit the World Trade Center, US Army General James Marks assumed command of the US Army Intelligence Centre at Fort Huachuca, Arizona. He acquired one aircraft to move the highest-ranking senior Army intelligence officers, on post for an Army-wide Intelligence Conference, off his post in preparation for the pre-war planning.¹¹⁹ At Huachuca, analysts and interrogators were trained to work detention operations. Marks had just returned from three and a half years overseas supporting operations in South Korea and Bosnia and he understood the importance of making training relevant for personnel bound for a war zone. But Huachuca's instructor base lacked experienced combat veterans, so Marks' staff developed new scenarios and training to prepare for the new war.¹²⁰

US Central Command (CENTCOM) Combatant Commander Army General Tommy Franks was en route to a meeting in Pakistan on 9/11 when he got word of the attacks. Immediately, he knew Bin Laden was responsible. The 9 September

¹¹⁴ Lester Grau (ed.), *The Bear Went Over the Mountain: Soviet Combat Tactics in Afghanistan*, (Washington, DC: NDU Press, 1996), p. 208

¹¹⁵ William Dalrymple, 'Ghosts of Gandamak,' *Deccan Chronicle on the Web*, 10 May 2010

¹¹⁶ Milton Bearden, 'Afghanistan, Graveyard of Empires,' *Foreign Affairs*, November/December 2001

¹¹⁷ Gary Berntsen, *JAWBREAKER*, (NYC: Crown Publishers, 2005), p. 99

¹¹⁸ *9/11 Commission Report*, p. 154.

¹¹⁹ James Marks, Author Interview, Fairfax, VA, 23 February 2009

¹²⁰ *Ibid.*

assassination of Northern Alliance leader Ahmed Shah Massoud suddenly made sense; Bin Laden needed Massoud out of the way before Al-Qaeda launched its attack. Franks knew the US would go after both Al-Qaeda and the Taliban. He ordered the aircraft to reverse course for MacDill Air Force Base in Florida.¹²¹

On 12 September, Franks arrived at his Tampa headquarters and spoke with Chairman of the Joint Chiefs of Staff (CJCS) General Hugh Shelton. Shelton asked how long it would take to get a full range of courses of action (COAs). Franks returned a day later with an overarching concept and provided a full range of options ten days later. The goal was to destroy Al-Qaeda and the Taliban through the use of technology and combat ground troops. Frank's staff started from scratch; there was no pre-developed strategy for a full-scale, 'boots on the ground' invasion of Afghanistan. This would have entailed diplomatic discussions for basing, staging of troops and equipment, and aircraft fly-overs with countries bordering Afghanistan, but during the Clinton Administration there was no appetite to prepare for such operations.¹²²

Franks based his plans on the understanding the President was committed to using the full force of the US military against the perpetrators of 9/11.¹²³ Tomahawk land attack missile strikes would destroy the Taliban's integrated air defence system, softening the battlefield for ground forces, followed by B-2 stealth bomber strikes using precision-guided joint direct attack munitions.¹²⁴ After the bombing campaign, the ground war phase would employ special operations forces (SOF), made up of Central Intelligence Agency (CIA) Special Activities Division personnel, Army Green Berets, Navy SEALs, Air Force combat controllers, and special mission operators from the Joint Special Operations Command (JSOC).¹²⁵ The use of SOF had been highly

¹²¹ Tommy Franks, *American Soldier*, (NYC: Harper-Collins, 2004), pp. 240-248

¹²² *Ibid.*, pp. 250-253

¹²³ Donald Rumsfeld, *Known and Unknown*, (NYC, The Penguin Group, 2011), pp. 341-343

¹²⁴ Franks, pp. 258-259

¹²⁵ *Ibid.*, pp. 260-261

encouraged by Deputy Secretary of Defence Paul Wolfowitz¹²⁶ and Secretary Rumsfeld on 15 September in a conversation with General Franks and on 21 September the plan was briefed to the President and his top Generals, Shelton, Richard Meyers, and JSOC Commander Dell Dailey.¹²⁷

The SOF would stage the invasion from the USS *Kitty Hawk*, a converted US Navy aircraft carrier in the North Arabian Sea. The *Kitty Hawk* would act as a ‘lily pad’ allowing SOF to leap frog into Afghanistan from the carrier, thus avoiding the complicated issues of establishing basing rights in neighbouring countries.¹²⁸ In December 2000, the CIA had laid out a plan to go after Al-Qaeda and the Taliban. Agency officers were ready to execute just hours after the first plane hit on 9/11, but they had to wait for the military planners to catch up.¹²⁹

On 9/11, Gary Schroen, the former Deputy Chief of the Near East and South Asia Division in the Directorate of Operations at the CIA, had just begun a 90-day retirement transition programme.¹³⁰ He had worked in Afghanistan intermittently since the late 1970s and personally knew many senior Northern Alliance commanders.¹³¹ On 13 September, CIA Director George Tenet laid out the agency’s plan to attack Al-Qaeda and the Taliban to Bush and this War Cabinet. The operation called for CIA paramilitary teams to link up with the Northern Alliance to pave the way for SOF to enter the country.¹³² From the outset, the Bush administration showed its propensity towards the intelligence-collection school-of-thought.

On 14 September, Schroen was called into a meeting with Cofer Black, head of the CIA’s Counterterrorism Centre and asked to delay retirement for one more mission. He would lead a seven-man team into Afghanistan, link up with the Northern Alliance,

¹²⁶ Rumsfeld, p. 359

¹²⁷ Ibid., p. 370

¹²⁸ Ibid., pp. 265-266

¹²⁹ George Tenet, *At the Centre of the Storm*, (NYC: Harper Collins, 2007), pp. 171, 186

¹³⁰ Gary Schroen, *First In*, (NYC: Presidio Press, 2005), pp. 11-12, 22

¹³¹ Ibid. p. 17

¹³² Tenet, pp. 175-176

and convince them to work with the US in their fight against Al-Qaeda and the Taliban. Black assured him all the resources he needed would be at his disposal to accomplish the mission.¹³³ On 15 September, Tenet further detailed his plan to the War Cabinet in a brief entitled 'Destroying International Terrorism'. A cornerstone of the strategy was the ability to 'detain AQ operatives unilaterally anywhere in the world'.¹³⁴ This was the beginning of the post 9/11, combined US intelligence 'Kill-Capture program',¹³⁵ that would eventually 'find, fix and finish' Bin Laden and many others¹³⁶ and would rely heavily on the ability to collect intelligence from any source available.

Schroen's team was officially known as the Northern Afghanistan Liaison Team but went by the code name 'Jawbreaker'.¹³⁷ This moniker had been used for teams going inside Afghanistan since early 2000.¹³⁸ After assembling his men and making preparations to leave, the team gathered their equipment, US\$3 million in cash and departed 19 September for Germany.¹³⁹ Prior to their departure, Black clarified the mission for his men:

You are to convince the Northern Alliance to work with us and to accept US military forces into the Panjshir Valley so we can utilise the area as a base of operations. Beyond that, your mission is to exert all efforts to find Usama bin Ladin and his senior lieutenants and to kill them . . . I do not want bin Ladin and his thugs captured, I want them dead. Alive and in prison here in the United States, they'll become a symbol, a rallying point for other terrorists . . . They must be killed . . . I want bin Ladin's head shipped back in a box filled with dry ice . . . Have I made myself clear?¹⁴⁰

¹³³ Schroen, pp. 15-19

¹³⁴ Tenet, p. 177

¹³⁵ Stephen Grey and Dan Edge, 'Kill/Capture,' *PBS Frontline*, May 2011

¹³⁶ Eric Rosenbach and Aki Perits, 'New Find-Fix-Finish Doctrine,' *JFQ*, Issue 61, 2nd Quarter 2011, (St. Louis, MO: NDU Press: April 2011), p. 96

¹³⁷ Schroen, p. 22

¹³⁸ Gary Berntsen, *JAWBREAKER*, (NYC: Crown Publishers, 2005), p. 45

¹³⁹ Schroen, pp. 28-29

¹⁴⁰ *Ibid.*, p. 38

For the first time in his 30-year career, Schroen had been ordered to kill rather than detain a target.¹⁴¹

On 18 September 2001, the US Congress passed Public Law 107-40, a joint resolution known as the Authorisation for Use of Military Force. The law cited the ‘acts of treacherous violence’ on 9/11 and reiterated the right of the US to defend itself and protect its citizens abroad. Section 2 specifically stated:

That the President is authorised to use all necessary and appropriate force against those nations, organisations, or persons he determines planned, authorised, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harboured such organisations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organisations or persons.¹⁴²

This law gave the President the authority and legal basis for killing or detaining individuals involved in the Global War on Terror (GWOT).¹⁴³

On 20 September, Bush delivered an ultimatum to the Taliban government of Afghanistan: deliver to US authorities all Al-Qaeda leaders, release all foreign nationals including imprisoned American citizens, protect all journalists, diplomats, and aid workers, close immediately and permanently every terrorist training camp, hand over every terrorist and every person in the terrorists’ support structure to appropriate authorities and give the US full access to terrorist training camps.¹⁴⁴

In response, Taliban leader Mullah Mohammed Omar said he would never turn Bin Laden over to the US. Interviewed on the *Voice of America*, he claimed it would be a violation of Islam and against his duty as a Muslim to deliver Bin Laden to infidels.¹⁴⁵ He told Pakistani journalist Rahimullah Yusefzai:

¹⁴¹ Ibid.

¹⁴² *Authorization for Use of Military Force*, Joint Resolution, 18 September 2001, Public Law 107-40 [S. J. RES. 23], 107th CONGRESS

¹⁴³ John Yoo, *Crisis and Command*, (NYC: Kaplan Publishing, 2009), p. 411

¹⁴⁴ George Bush, President, ‘Bush delivers ultimatum,’ *CNN*, 21 September 2001

¹⁴⁵ Peter Bergen, *The Osama bin Laden I Know*, (NYC: Free Press, 2006), p. 315

I will never deliver bin Laden . . . I know I can't fight the Americans, but if God helps me I will survive. I don't want to go down in history as someone who betrayed his guest. I am willing to give my life, my regime, since we have given him refuge, I cannot throw him out now.¹⁴⁶

The US government continued to work UN diplomatic channels before the invasion. UN Secretary General Kofi Anan's Special Envoy Francesc Vendrell met with the Taliban's Ambassador to Pakistan Abdul-Salam Zaeef in Islamabad and Mullah Omar in Kandahar on several occasions in an effort to pressure the Taliban to detain and turn over Bin Laden.¹⁴⁷ His efforts were unsuccessful.

On 26 September, Jawbreaker arrived in the Panjshir Valley and met with Northern Alliance leaders in the village of Barak.¹⁴⁸ Schroen made it clear to Engineer Aref, the Chief of Northern Alliance Intelligence, the US would support them in destroying the Taliban and Al-Qaeda and US military forces were preparing to invade the country. As a gesture of good faith, Schroen handed him US\$500,000 in cash and guaranteed further payments. Over the next 40 days, Schroen paid out US\$5 million to ensure the collapse of the Taliban.¹⁴⁹

The US bombing campaign officially launching Operation Enduring Freedom (OEF) began the evening of 7 October; US planes hit 31 targets across Afghanistan, but only three bombs were dropped near Kabul and nothing touched Taliban and Al-Qaeda positions on the front lines. This was not enough to help the Northern Alliance break out of their lines and take Kabul.¹⁵⁰ That night, Bin Laden released his first public statement accepting responsibility for the attacks on 9/11.¹⁵¹ Over the coming weeks, more CIA and SOF personnel were inserted into Afghanistan to mark bombing targets. As the future of Kabul was debated in Washington, DC, the pace of air attacks remained

¹⁴⁶ Ibid., p. 315

¹⁴⁷ Abdul-Salam Zaeef, *My Life With The Taliban*, (NYC: Columbia Press, 2010), pp. 131-132

¹⁴⁸ Schroen, pp. 78-80

¹⁴⁹ Ibid., pp. 87-93

¹⁵⁰ Ibid., pp. 148, 154-155

¹⁵¹ Peter Bergen, *Holy War Inc.* (NYC: Touchstone, 2002), p. 232

a trickle. Northern Alliance General Mohammed Fahim estimated it would take two or three days to capture Kabul once the US bombed key Taliban and Al-Qaeda positions.¹⁵²

The first use of US ground forces against the Taliban took place 19 and 20 October when SOF and Army Rangers attacked an airfield (Objective Rhino), and a compound (Objective Gecko), outside of Kandahar that belonged to Mullah Omar.¹⁵³ US forces left calling card pictures of New York fire-fighters hoisting the US flag at the World Trade Centre site and fire fighters and military raising a flag at the Pentagon.¹⁵⁴ The sites had been mostly abandoned,¹⁵⁵ but the psychological purpose was to demonstrate US capability in the heart of Taliban territory.¹⁵⁶ Like the 1942 Doolittle Raid on Tokyo after Pearl Harbour,¹⁵⁷ US forces showed the Taliban and Al-Qaeda they were vulnerable. These missions ended the Clinton-era reticence to use US combat ground troops to fight an enemy.

During the first week of November, the US stepped up air raids; with multiple CIA and SOF teams on the ground working with the Northern Alliance, the US began systematically destroying enemy strongholds.¹⁵⁸ On 10 and 11 November, the US launched 25 air strikes killing more than 2,000 fighters and taking out 29 tanks and six command bunkers.¹⁵⁹ By 12 November, the battle on the Shomali Plains was in full swing. The ground offensive to take Kabul began with 15,000-pound BLU-82 'Daisy Cutter' bombs dropped on enemy positions; the Northern Alliance entered Kabul the morning of the 13th. By 14 November the Taliban had fled south.¹⁶⁰

¹⁵² Schroen, pp. 194, 234-235

¹⁵³ *United States Special Operations Command History: 1987 to 2007*, (Tampa, Florida: Department of Defence, 2007), pp. 89-90

¹⁵⁴ Woodward, *Bush at War*, pp. 249-250

¹⁵⁵ Pete Blaber, *The Mission, the Men, and Me*, (NYC: Penguin Group, 2008), p. 151

¹⁵⁶ Woodward, p. 250

¹⁵⁷ Lieutenant Colonel Jimmy Doolittle, USA, *General Doolittle's Report on Japanese Raid: 18 April 1942*, 9 July 1942, War Department, HQ of the Army Air Forces, Washington, DC

¹⁵⁸ Schroen, pp. 311-312

¹⁵⁹ Berntsen, p. 168

¹⁶⁰ *Ibid.*, p. 183

Jawbreaker was in a hurry to get to Al-Qaeda safe houses and foreign fighters for intelligence purposes, but the Northern Alliance captured many of them first, holding them at a schoolhouse prison, and it was difficult to gain access. From the start, the Arab and Pakistani prisoners provided cover stories. They ‘fit the same profile: poor, uneducated, seemingly clueless young men’ who ‘parroted the same stock answers: They had come to Afghanistan recently for the purpose of doing business or working for a charitable organisation and had been trapped by the outbreak of fighting.’ The Arab prisoners were ‘all scared to death’ of the Northern Alliance and appeared willing to trade any information they had for their lives.¹⁶¹

Intelligence collected by Jawbreaker indicated one group of Al-Qaeda went south into Logar province, while Bin Laden and another contingency moved east towards Jalalabad near the Tora Bora Mountains, where he had developed an extensive cave complex during the 1980s while fighting the Soviets.¹⁶² These reinforced caves and mountain passes afforded Bin Laden the ability to hide indefinitely and even escape into Pakistan.¹⁶³

To the north and west, US air strikes and Northern Alliance ground attacks were crushing enemy forces; on 24 November, 600 Taliban and Al-Qaeda fighters who had fled Konduz unexpectedly showed up at the Mazar-e-Sharif airport to surrender.¹⁶⁴ Most of the small US ground force had already moved to positions near Konduz and were unable to assist in the surrender to Northern Alliance Generals’ Atta Mohammed Noor and Abdul-Rashid Dostum. It took the Northern Alliance two hours to conduct the full surrender and collect the enemy’s weapons, but only ‘about every fifth Taliban fighter was getting a cursory pat-down’.¹⁶⁵ Dostum, a former communist union leader-

¹⁶¹ Ibid., pp. 208, 211

¹⁶² Ibid., p. 214

¹⁶³ Bergen, *Holy War Inc.*, pp. 54, 123

¹⁶⁴ Doug Stanton, *Horse Soldiers*, (NYC: Scribner, 2010), pp. 292-293

¹⁶⁵ Ibid., p. 299

turned militia commander, fought the US-backed mujahedeen during the 1980s.¹⁶⁶ He had a history of switching sides when politically expedient, and despite his concession to keep the prisoners at the airport, he delivered them to the Qalat-e-Janghi, a fortress south of Mazar-e-Sharif where a cache of weapons, ammunition, RPGs, rockets, and rifles were stored awaiting demolition.¹⁶⁷

At Qalat-e-Janghi, the Northern Alliance divided the prisoners into two groups: the first, comprised of Afghans, was given the prerogative to swear allegiance to the Northern Alliance and return home to their villages or join the Northern Alliance in the fight. The other group encompassed the foreign fighters. They included Chechens, Pakistanis, Chinese (Uyghurs), Uzbeks, Arabs, a few Westerners and their hard-core Al-Qaeda allies. These ‘would-be martyrs’ were to be detained and interrogated.¹⁶⁸

The next morning, 25 November, CIA officers Michael Spann and David Dawson¹⁶⁹ travelled to the fortress to begin debriefing prisoners.¹⁷⁰ As they left their base in Mazar-e-Sharif, several SOF offered to provide security for them, but Dawson refused.¹⁷¹ These SOF were from US Operational Detachment Alpha (ODA) 595, 5th Special Forces Group, and had been with Dostum’s forces when the prisoners surrendered.¹⁷² They were concerned that the prisoners had not been adequately searched and believed many had weapons and explosives still on them; prisoners had killed at least two Northern Alliance commanders already.¹⁷³

Spann and Dawson were looking for foreign fighters with knowledge of Bin Laden’s whereabouts or information about future attacks. As Spann walked through the rows of prisoners bound and seated on the ground of the inner courtyard, he stopped to

¹⁶⁶ Author Unknown, ‘Obama orders review of alleged slayings of Taliban in Bush era,’ *CNN*, 13 July 2009

¹⁶⁷ *Ibid.*, pp. 298-300

¹⁶⁸ Stanton, p. 278

¹⁶⁹ Tom Newton Dunn, ‘SBS Hero Killed on Holiday,’ *The Sun*, 10 Jun 2006

¹⁷⁰ Berntsen, pp. 245-246

¹⁷¹ Stanton, p.8

¹⁷² John Barry and Babak [Dehghanpisheh](#), ‘The Death Convoy Of Afghanistan,’ *Newsweek*, 26 August 2002

¹⁷³ Berntsen, pp. 245-246

speak to the Western looking John Walker Lindh.¹⁷⁴ He questioned Lindh in English, but Lindh kept his head down and refused to answer. Spann and Dawson sifted through prisoners until 11:15 AM, when one of the prisoners detonated a grenade, sending the courtyard into chaos. Within minutes, the prisoners killed at least 20 guards and Michael Spann, secured the makeshift armoury stockpiled with weapons, and controlled half the fortress.¹⁷⁵ The Northern Alliance's failure to search and properly screen prisoners had enabled the revolt.

President Bush said the calamity at Qalat-e-Janghi underlined the need for a US detention facility away from the battlefield.¹⁷⁶ In response to Spann's death, CIA headquarters forbade all teams in the field from entering prisons to interrogate detainees. Gary Berntsen, who replaced Schroen as Jawbreaker's leader, told his team they would not obey the order because it would severely hamper their efforts to collect vital intelligence.¹⁷⁷ This was clearly an overreaction from leadership and he would not let it hamper their efforts to do their jobs.

Members of the international media observed the surrender of Taliban forces in Mazar-e-Sharif, accompanied Dostum to the fortress, documented the uprising, and witnessed the deaths of more than 300 prisoners. ODA-595's interaction with Dostum's forces was heavily scrutinised and they were accused of using disproportionate force. By 28 November, Northern Alliance troops had reclaimed most of the prison except for a basement where some 86 prisoners (including Lindh) withstood fire, bombing, flooding, and starvation.¹⁷⁸

When they finally surrendered, survivors were loaded into shipping containers on 1 December with other prisoners from Konduz and sent to Sheberghan Prison west

¹⁷⁴ Ibid., p. 248

¹⁷⁵ Ibid., pp. 251-252

¹⁷⁶ George Bush, *Decision Points*, (NYC: Crown, 2010), p.166

¹⁷⁷ Berntsen, pp. 269-270

¹⁷⁸ Damian McElroy, 'Eighty Taliban prisoners in mass suicide,' *Daily Telegraph*, 2 December 2001

of Mazar-e-Sharif.¹⁷⁹ An estimated 150 prisoners were crammed into each container. Along the way, many suffocated and others were killed when Dostum's guards opened fire into the containers. The bodies were reportedly buried with the dead from the Qalat-e-Janghi battle in the Dasht-e-Leili desert outside Sheberghan.¹⁸⁰ Dostum claimed the deaths were unintentional,¹⁸¹ but the killings called into question the safety of 6,000 other Taliban prisoners in Northern Alliance custody.¹⁸²

Prisoners had been arriving at Sheberghan Prison since the fall of Konduz on 22 November. US SOF and intelligence screening teams were in the area when the prisoners arrived from Qalat-e-Janghi. US 5th Group estimated 40 prisoners had died from their combat wounds en route, but survivors put the number as high as 1,000.¹⁸³ In 2002, a declassified US State Department report estimated as many as 1,500 died in the containers.¹⁸⁴ In July 2009, President Obama ordered an investigation into the US's role in the alleged cover-up.¹⁸⁵

The US Coalition Forces Land Component Command (CFLCC) in Kuwait,¹⁸⁶ the headquarters for the ground war, ordered Lieutenant General Franklin Hagenbeck, Commander of the 10th Mountain Division, to assist the Northern Alliance with the screening of prisoners at Sheberghan. Hagenbeck created TF Commando, led by Brigade Commander Colonel Kevin Wilkerson. Wilkerson assembled a team of infantry, security, military police (MPs), interrogation, and medical personnel to screen the prisoners and arrived 28 December. He also developed a working understanding with Dostum and instituted a strict screening process in order to avoid another prisoner

¹⁷⁹ Barry and [Dehghanpisheh](#)

¹⁸⁰ James Risen, 'US accused of inaction after Taliban POWs killed in '01,' *NYT*, 11 July 2009

¹⁸¹ Ibid.

¹⁸² McElroy

¹⁸³ Barry and [Dehghanpisheh](#)

¹⁸⁴ Risen

¹⁸⁵ Author Unknown, 'Obama orders review of alleged slayings of Taliban in Bush era,' *CNN*, 13 July 2009

¹⁸⁶ Chris Mackey and Greg Miller, *The Interrogators*, (NYC: Little Brown and Company, 2004), p. 131

revolt. For more than two weeks prisoners were screened and those deemed to have high intelligence value were sent to Kandahar for further detention and exploitation.¹⁸⁷

On 13 November 2001, Bush, in anticipation of holding detainees long term, signed executive order Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism that laid the foundation for military commissions. The order affected all aspects of US detention policy that followed.¹⁸⁸ It placed the Department of Defence (DOD) over all detention and military commissions, something that had not been done in over 50 years. Much of the language used in the order (which referred to commissions) came directly from President Franklin Roosevelt's order to establish military commissions in 1942.¹⁸⁹

Opposition to the order began immediately; on 19 November when the director for the Centre for National Security Studies published a memorandum stating the military detention order was unconstitutional and violated the separation of powers.¹⁹⁰ On 5 December, a letter was sent to Senator Patrick Leahy, chairman of the Senate Judiciary committee, signed by 500 American law professors who disapproved of the military order and favoured using the US court system instead.¹⁹¹ Opposition continued to intensify as the war progressed. From this moment on, the two ideological camps were defined; the Bush administration favoured the intelligence-collection school-of-thought versus the judicial-Geneva school-of-thought.

The inception of formal military detention and interrogation operations in Afghanistan began with General Franks' request to Secretary of Defence Donald

¹⁸⁷ *The United States Army In Afghanistan*, October 2001 to March 2001, US Army Center of Military History, 17 March 2006, p. 28

¹⁸⁸ George Bush, Military Order of November 13, 2001, *EO Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism*, (Washington, DC: Federal Register, 16 November 2001)

¹⁸⁹ Rumsfeld, pp. 556-557

¹⁹⁰ Kate Martin, *MEMO: Lawfulness of Executive Order establishing Military Commissions*, (Washington, DC: Center for National Security Studies, 19 November 2001)

¹⁹¹ *500 Lawyers and Law Professors, Open letter of opposition to the Military order of 13 November 2001*, to Senator Patrick Leahy, Chairman of the Senate Judiciary Committee, 5 December 2001

Rumsfeld and CJCS General Meyers to create an interagency coordination cell.¹⁹² On 20 November, CENTCOM approved a Joint Interagency Task Force for Counterterrorism (JIATF-CT) to be led by Harrell. Franks wanted the JIATF-CT to fuse the intelligence stream together to be ‘stove piped’ and sent directly back to him. He trusted Harrell implicitly and dubbed him ‘the quarterback’.¹⁹³

The team was comprised of 30 military personnel, primarily from CENTCOM and SOF. Additional members were provided by the CIA, the Drug Enforcement Agency (DEA), the FBI, the Diplomatic Security Service (DSS), the US Customs Service, the National Security Agency (NSA), the Defence Intelligence Agency (DIA), the Justice, Treasury, and State Departments, and New York’s Joint Terrorism Task Force (JTTF). An advance team was sent to Afghanistan at the end of November and the remainder deployed throughout December.¹⁹⁴ By the end of 2001, JIATF-CT was fully functional and known in country as TF Bowie. They reported directly to Franks.¹⁹⁵

The JIATF-CT’s primary function was to maintain real-time communications between Afghanistan and Washington and serve as an intelligence fusion centre while jointly operating the prison and interrogation facility at Bagram.¹⁹⁶ Instead of selecting an active duty asset, Marine Intelligence Reservist Master Sergeant John Nichols was pulled out of the Individual Ready Reserve and mobilised as the non-commissioned officer in charge of TF-Bowie. Responsible for detention and interrogation operations, Nichols supervised all military interrogators and won a Bronze Star for his work with high-value detainees (HVD).¹⁹⁷

¹⁹² Colonel Matthew Bogdanos, *Transforming Joint Interagency Coordination*, Case Studies in National Security Transformation Number 9, August 2007, (Washington, DC: NDU Press, August 2007), pp. 3-5

¹⁹³ Sean Naylor, *Not A Good Day To Die*, (NYC: Penguin Group, 2005), p. 33

¹⁹⁴ Bogdanos, pp. 3-5

¹⁹⁵ *The United States Army In Afghanistan*, p. 20

¹⁹⁶ Bogdanos, pp. 3-5

¹⁹⁷ Author Unknown, *Operation Enduring Freedom Unifies Marines*, MacDill Air Force Base, FL, 21 August 2002

The TF identified 11 of the top 25 Taliban and Al-Qaeda targets sought by the US and established Afghanistan's first border security programme using multi-agency resources to collect biometric data. The intelligence obtained by TF-Bowie in the early months of the war 'saved American lives and led to some critical, time sensitive special ops missions'.¹⁹⁸ CJCS General Meyers praised TF-Bowie's interrogation facility as 'the most capable in the theatre'¹⁹⁹ and affirmed that the JIATF-CT functioned just as he and Rumsfeld envisioned when they authorised its creation.²⁰⁰

On 25 November 2001, US Marine Corps (USMC) TF-58, commanded by Brigadier General James Mattis²⁰¹ captured Mullah Omar's airfield and the compound originally attacked by SOF and Rangers on 10 October and established Forward Operating Base (FOB) Rhino.²⁰² Rhino, 55 miles southwest of Kandahar at Dolangi, was a remote airstrip renovated by Bin Laden and used by wealthy Saudis.²⁰³ TF-58 established Camp Rhino, the first major US base in Afghanistan, as a logistics hub and staging base. A month later, CFLCC ordered the establishment of a prisoner holding facility at the base²⁰⁴ large enough to hold 100 prisoners.²⁰⁵ Ultimately, the only prisoner to be held at the facility was Lindh,²⁰⁶ and he was eventually transferred to the brig aboard the USS *Peleliu*²⁰⁷ positioned off the coast of Pakistan.²⁰⁸ Taliban Ambassador to Pakistan Abdul-Salam Zaeef and other HVDs would later join Lindh on the *Peleliu*.²⁰⁹ The 15th Marine Expeditionary Unit (MEU) and the Navy Seabees kept

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Bogdanos, pp. 3-5

²⁰¹ 'Continuing Operations 13 December 2001 to 26 February 2002,' *The Strategy Page*, 10 July 2010

²⁰² *The United States Army In Afghanistan*, p. 14

²⁰³ Andy Worthington, *The Guantanamo Files*, (London: Pluto Press, 2007), p. 81

²⁰⁴ *The United States Army In Afghanistan: Operation Enduring Freedom*, p. 14

²⁰⁵ Linda Kozaryn, 'U.S. to Question Detainees,' *AFPS*, 18 December 2001

²⁰⁶ Evan Thomas, 'A Long, Strange Trip To The Taliban,' *Newsweek*, 17 December 2001

²⁰⁷ Author Unknown, 'Continuing Operations 13 December 2001 to 26 February 2002,' *The Strategy Page*, 10 July 2010

²⁰⁸ Linda Kozaryn, 'Detainees May Include Al Qaeda, Taliban Leaders,' *AFPS*, 18 December 2001

²⁰⁹ Abdul-Salam Zaeef, *My Life With The Taliban*, (NYC: Columbia Press, 2010), pp. 173-175

Camp Rhino in working order,²¹⁰ but the FOB was closed 4 January 2002 when Kandahar fell and operations were transferred there.²¹¹

During autumn 2001, the US Army mobilised a group of interrogators to support combat operations; reservists from the 325th Military Intelligence (MI) Battalion in Hartford, Connecticut were deployed in October to Fort Bragg, North Carolina, to assist their active duty parent unit, the 525th MI Brigade, and to provide intelligence support to the XVIII Airborne Corps also at Fort Bragg. This group ultimately became TF-500, responsible for detention and intelligence collection in Kandahar.²¹²

By December 2001, US SOF had pinned Bin Laden and his forces in Nangarhar province in the Tora Bora Mountains.²¹³ This area had been Bin Laden's base of operations during the war against the Soviets and he had spent years turning the limestone into an impregnable fortress.²¹⁴ The US sustained a weeklong bombing campaign that pushed the Al-Qaeda fighters into the mountains, killing approximately 500 in the process.²¹⁵ At one point, SOF recovered a radio tuned to an Al-Qaeda frequency and listened in on communications outlining their desperate need for food and water and heard Bin Laden inspiring his men to keep fighting.²¹⁶ The CIA's top Bin Laden voice analysis expert was on the ground and authenticated his voice.²¹⁷ They also learned Bin Laden had grown fearful of betrayal by his own men; he 'no longer trusted the Taliban or other non-Arabs and had surrounded himself exclusively with Saudis and Yemenis'.²¹⁸ He peeled off from the Algerian, Kuwaiti, Egyptian, Pakistani, Chechen, Libyan, and Afghan forces that fought in the mountains. Afghan forces captured 22 Al-

²¹⁰ Author Unknown, 'Continuing Operations 13 December 2001 to 26 February 2002,' *The Strategy Page*, 10 July 2010

²¹¹ Jeff Goldblatt, 'Marines Close Camp Rhino; 101st Airborne to Control Kandahar Airport,' *Fox News.com*, 4 January 2002

²¹² Mackey and Miller, pp. 50, 53-54, 57

²¹³ Dalton Fury, *Kill Bin Laden*, (NYC: St. Martin's Press, 2008), pp. 107-108

²¹⁴ Ibid.

²¹⁵ Berntsen, p. 292

²¹⁶ Ibid., pp. 283-284

²¹⁷ Scott Shane, 'Senate Report Explores 2001 Escape by bin Laden From Afghan Mountains,' *NYT*, 28 November 2009

²¹⁸ Berntsen, p. 293

Qaeda fighters who confirmed they had recently shared tea with Bin Laden who urged them to continue fighting.²¹⁹

On 15 December, SOF heard Bin Laden apologise to his men for their ordeal and led them in prayer. Finally, they split up again with 135 men heading east into Pakistan while Bin Laden and 200 Saudis and Yemenis took a more difficult route into the Pashtun tribal areas of Parachinar, Pakistan.²²⁰ A Pashtun guide who sheltered Bin Laden as he recovered from his battle wounds was captured by SOF and confirmed that he had escaped into Pakistan.²²¹ Pakistani forces captured ‘very large numbers’ of prisoners fleeing Afghanistan and on 10 December Secretary Rumsfeld said the US would be ‘deeply involved in interrogation and intelligence gathering . . . [from the] treasure trove’ of detainees.²²²

The first phase of the war concluded 17 December, when the Northern Alliance publicly declared victory.²²³ It took just over two months and US\$70 million to help the Northern Alliance liberate Afghanistan. But even with 110 CIA officers, 350 SOF,²²⁴ and US airpower, the main objective of killing or capturing Bin Laden was not achieved.²²⁵ The US clearly showed the focus the administration had on placing troops on the ground to deal with terrorists and collecting intelligence.

On 12 December 2001, Deputy Secretary of Defence Paul Wolfowitz testified before the US Senate Armed Services Committee on behalf of Rumsfeld regarding the historical use of military commissions from the Revolutionary War to the post-WWII era.²²⁶ He said of the 1,672 Germans prosecuted for war crimes by US military

²¹⁹ Ibid., p. 300

²²⁰ Ibid., p. 307-308

²²¹ Fury, p. 4

²²² Linda Kozaryn, ‘U.S. Holds 23 Taliban, Al Qaeda; Tora Bora Search Continues,’ *AFPS*, 20 December 2001

²²³ Fury, p. 1

²²⁴ Berntsen., 308-309

²²⁵ Fury, pp. 1, 3

²²⁶ Jim Garamone, ‘Wolfowitz Discusses Military Commissions Trying Terrorists,’ *AFPS*, 13 December 2001

commissions, convictions were obtained in 1,416 cases. In Japan, the rate was similar; of 996 suspected war criminals, 856 were convicted.²²⁷

Wolfowitz laid out a compelling case for keeping unlawful belligerents out of the civilian courts. First, he said, military commissions protect judges, jurors, courts, and the trials from terrorist threats and provide quick, safe, and secure trials. Second, they have more flexible rules of evidence based on battlefield conditions that do not always allow for the forensic collection of evidence and chain of custody requirements that are required in the civilian courts. Third, they allow for the use of classified information without risking the sources and methods used to obtain the information.²²⁸

Wolfowitz would prove prophetic. He juxtaposed coalition forces storming a Taliban compound or an Al-Qaeda safe house and then providing a search warrant. In previous wars, military commissions were held at the end of the conflict rather than during it. This added a layer of complexity to the process but explained to the world how the US was going to deal with the terrorists who had perpetrated 9/11.

In December 2001, US forces began taking and holding their own prisoners. Detainees were typically hooded and zip-tied for transport and remained so until they were imprisoned away from the battlefield.²²⁹ DOD doctrine and standard operating procedure (SOP) dictated that capturing units affix a capture tag to each detainee detailing the circumstances of each prisoner's apprehension including: the date and time of capture, a field-assigned temporary serial number, the detainee's name, date of birth, prisoner's unit or organisation, capturing unit, location of capture (in eight digit grid coordinates), physical condition at the time of capture, and any weapons, equipment, or documents he may have had on his person at the time of detainment.²³⁰

²²⁷ Paul Wolfowitz, Deputy Secretary of Defense, *Testimony Before the Senate Armed Services Committee on Military Commissions*, (Washington DC: DOD, 13 December 2001)

²²⁸ Ibid.

²²⁹ Berntsen., p. 287

²³⁰ *Field Manual 34-52: Intelligence Interrogation*, (Washington, DC: Department of the Army, 1992), p. 3-8

Failure to obtain any of this critical information rendered many detainees in an on-going state of detention limbo, a premature release before a proper intelligence debriefing, or, as often was the case, an interminable cycle of ineffectual interrogation. Capturing units were instructed to follow the SOP of search, silence, segregate, safeguard, speed, and tag (five Ss & T), a policy designed to ensure the safety of both detainee and captor.²³¹

At Camp Rhino, General Mattis received word the 15th MEU would return home and the 26th MEU would move to the Kandahar airport to provide security to Seabees building the new detainee holding facility. Speed of construction was hampered by unmarked Soviet-era mines, unexploded ordnance, garbage, and limited space. Members of the Army's TF-500 arrived 19 December 2001 to assist with the arrival of the first prisoners.²³² By 21 December, the Kandahar Short-Term Holding Facility (STHF), also known as the Kandahar Holding Area, was ready to support 200 detainees, but CENTCOM ordered capacity increased to 500. On 27 December, Assistant Secretary of Defence for Public Affairs Torie Clarke confirmed that 37 detainees were in custody at the STHF and another eight were aboard the USS *Peleliu*.²³³ The next day, 28 December, 25 additional prisoners were transferred from Pakistan to US custody in Kandahar.²³⁴ There were an estimated 7,000 detainees in the custody of the Northern Alliance.²³⁵

On 28 December 2001, five teams of Russian, Arabic, and Farsi-speaking interrogators arrived at the STHF to work with the Interrogation Control Element (ICE) at the Joint Interrogation Facility (JIF). Most of the 40 detainees were foreign Arab

²³¹ *Field Manual 2-22.3 (34-52): Human Intelligence Collector Operations*, (Washington, DC: Department of the Army, 2006), p. 5-24

²³² Mackey and Miller, p. 60

²³³ Jim Garamone, '45 Al Qaeda, Taliban Detainees Under U.S. Control,' *AFPS*, 27 December 2001

²³⁴ Gerry Gilmore, 'Military Tribunal Rules Still A Work In Progress,' *AFPS*, 28 December 2001

²³⁵ Author Unknown, 'US to hold detainees at Guantanamo Bay,' *CNN*, 28 December 2001

fighters.²³⁶ Canadian Special Forces assigned to JTF2 in Kandahar also turned their battlefield detainees over to the STHF for processing which caused some Canadians concern over US assurances to comply with the Geneva Conventions.²³⁷ The ICRC was invited into the STHF and conducted regular visits.²³⁸

Mattis was security-conscience and mindful of the revolt at Qalat-e-Janghi as well as other attacks on guards in Pakistan. He was determined there would be no prisoner breakouts at the Kandahar STHF and ordered his personnel to follow the Geneva Conventions, but instructed that any prisoner caught trying to escape be shot. To minimise attempts at mass breakouts, each prisoner holding area was limited to 20 detainees. Like the TF-Bowie prisoner facility in Bagram, the Kandahar STHF was open to military, coalition, and US government agencies to interrogate prisoners as long as any information collected was shared immediately with TF-58. Those who failed to comply were escorted out of the country.²³⁹

An influx of detainees from all over Afghanistan and Pakistan arrived in late December and early January 2002. The TF strained to manage their care and feeding requirements. Army MPs and additional interrogators arrived with supplies, which improved conditions for the detainees.²⁴⁰ Interrogators found the detainees fell into two groups: a small number of ideologically committed Al-Qaeda fighters or the majority who claimed to have been coerced into fighting. Those who pleaded for non-combatant status had myriad excuses for being in Afghanistan: to marry local brides, to work for charitable organisations, or to study the Qu'ran.²⁴¹ CENTCOM was eager to remove all prisoners from the combat theatre of operations and relinquish their care, feeding, and

²³⁶ Mackey and Miller, pp. 58-59, 71, 74, 79

²³⁷ Michelle Shephard, *Guantanamo's Child*, (Mississauga, Ontario, Canada: John Wiley & Sons, Canada Ltd, 2008), pp. 118-119

²³⁸ Author Unknown, 'Continuing Operations 13 December 2001 to 26 February 2002,' *The Strategy Page*, 10 July 2010

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid., 81

interrogation to the Pentagon.²⁴² Franks felt that given his limited amount of troops, he did not have the resources to dedicate to prisoner detention operations in theatre.²⁴³

Rumsfeld was 'displeased to have the Defence Department take on the detention mission and protested the idea repeatedly', but he understood how vital the intelligence collected from detainees would be to saving American lives. He also realised the US 'could not count on any other country to perform the mission and no other agency of the US government was ready to do it', so Rumsfeld accepted the task, recognising the mission would 'be a source of more trouble and more criticism than anyone could predict. It proved every bit as bad as he anticipated'.²⁴⁴

His hesitancy stemmed from the fact that the DOD had no experience dealing with long-term detention and incarceration for an unlimited amount of time with an asymmetric, unconventional enemy. The DOD was used to interrogating and detaining prisoners who followed the internationally accepted rules of war as lawful combatants who met the standards for POW status.²⁴⁵ The drafters of the Geneva Conventions had not envisaged the rules to be applied to a group of terrorists who fought asymmetrically and provided no reciprocity.²⁴⁶ This very issue would be at the heart of the ensuing debate on detention.

The US needed to prevent another terrorist attack and unlike the Cold War, where satellite technology could warn of impending aggression, the GWOT depended on human intelligence (HUMINT) to discover *mujahadeen* capabilities, plans, and locations. Until counterterrorism (CT) operators could penetrate terrorist cells, the best source of HUMINT the US had was the HVDs.²⁴⁷

²⁴² Douglas Feith, *War and Decision*, (NYC: Harper Collins, 2008), p. 159

²⁴³ Kirk Lippold, Author Interview, Crystal City, VA, 29 September 2009

²⁴⁴ Feith, p. 160

²⁴⁵ Rumsfeld, pp. 557-556

²⁴⁶ Ibid., pp. 560-561

²⁴⁷ Feith, p. 159

HDC Phase II: Mistakes Are Made in Detainee Handling and Incarceration

After 9/11, the Pentagon went to work to identify a potential holding site for the detainees in order to remove them from the battlefield and start the intelligence collection process ensued. Both the Joint Staff and the Office of the Secretary of Defence (OSD) developed plans and looked at facility sites.²⁴⁸ Navy Commander Kirk Lippold, the skipper of the USS *Cole* in October 2000 when it was attacked by Al-Qaeda off the coast of Yemen, was working at the Pentagon on 9/11. Assigned to the Joint Staff in the Plans and Policy Directorate (J-5), Global Division, Lippold was on the team tasked to handle detention policy.²⁴⁹

The division leadership had no experience dealing with detention policy and operations. The officer in charge was an Army infantry officer, J-5 Deputy Director Brigadier General Chuck Jacobi, and his assistant was US Air Force (USAF) Colonel Michael Spencer, an A-10 pilot. They relied heavily on the counsel of operational law attorney Kathy Knowls, whose expertise was the law of armed conflict. Her team recommended all high-level Taliban and Al-Qaeda members be taken into US custody, but advised that Taliban foot soldiers be removed from the battlefield and held until the new Afghan government could assume responsibility for them.²⁵⁰

The staff considered various locations for detention centres including: Diego Garcia, Tinian, Guam, Kwajalein, and Guantanamo Bay (GTMO). Other foreign governments also volunteered to host detention facilities, but the staff decided that changing political situations would be problematic if detainees were located in those countries and determined that sending detainees to US territories like Guam would trigger constitutional issues. British-controlled Diego Garcia was a good option, but it lacked the infrastructure to support detention operations. The assets on Kwajalein, a small Pacific Island, were already committed to other missions. The team concluded

²⁴⁸ Lippold Interview.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

GTMO, a US-controlled base on Cuban territory, was the best of all the options.²⁵¹ Detainees of US citizenship would be held at the US Navy Consolidated Brig in Charleston, South Carolina.²⁵²

At the OSD, Rumsfeld initially assigned detention policy to Matt Vaccaro, the Director of the Office of Peace Operations in the Office of the Under Secretary of Defence for Policy.²⁵³ His work laid the foundation for what became a new position, the Deputy Assistant Secretary of Defence (DASD) for Detainee Affairs.²⁵⁴ Rumsfeld also relied on Paul Butler, a former federal prosecutor from the Southern District of New York who was the DASD for Special Operations and Low Intensity Conflict (SOLIC).²⁵⁵ Butler tried *USA v. Usama Bin Laden*, which led to the conviction of four members of Al-Qaeda for their roles in the bombing of US Embassies in Kenya and Tanzania.²⁵⁶ Rumsfeld was so impressed with Butler's work on detention matters, that he eventually made him his personal assistant.²⁵⁷ Lastly, Rumsfeld depended on DOD Office of General Counsel Attorney Eliana Davidson and made her the legal point person on detainee affairs. She reported directly to William 'Jim' Haynes, the Pentagon's senior lawyer who signed memos that went directly to Rumsfeld.²⁵⁸ Both Butler and Davidson clearly understood the differences in the two emerging ideological camps and supported the SECDEF as he moved forward with the intelligence-collection focus.

In addition to the Joint Staff and the OSD, the State Department also developed recommendations on the detainee issue. The day after 9/11, with war imminent, Deputy Secretary of State Richard Armitage contacted another lawyer, Pierre-Richard Prosper,

²⁵¹ Ibid.

²⁵² William J. Haynes, General Counsel, Office of the Secretary of Defense, *Action Memo Detention Facilities in the Continental United States*, 27 December 2001

²⁵³ Mathew Vaccaro, Resume, Naval Post Graduate School, Monterey, CA, Current as of 16 August 2010

²⁵⁴ Lippold Interview.

²⁵⁵ Cully Stimson, Author Interview, Washington, DC, 17 February 2009

²⁵⁶ Paul Butler, Resume, Akin Gump, Current as of 16 August 2010

²⁵⁷ Stimson Interview.

²⁵⁸ Lippold Interview.

the State Department's Ambassador-at-Large for War Crimes Issues, to discuss the holding of POWs. On 19 September 2001, White House Counsel Alberto Gonzalez appointed Prosper to head an interagency group to make recommendations on legal issues applying to Taliban and Al-Qaeda prisoners. Separately, Gonzalez had another group of White House lawyers working on detainee issues and, on 13 November, President Bush signed the Executive Order on Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism. Prosper was blindsided by the order which would become the foundation for the Bush Administration's detention policy.²⁵⁹

Prosper's team examined approximately 16 sites for detainment facilities, taking into consideration whether they were US-owned or controlled, capable of expansion, and secure. Of those, 15 sites had significant drawbacks, but during a meeting an unnamed Justice Department official suggested GTMO. Immediately, it appeared to fit every criterion and did not even require a treaty with Cuba.²⁶⁰ Ultimately, Rumsfeld made the final decision; after weighing recommendations from the State Department, the Joint Staff, and his own people, he announced 28 December 2001 that HVDs would be sent to GTMO as the 'least worst place'.²⁶¹

During the first week of January 2002, CFLCC ordered TF-58 to ready detainees for transfer to GTMO. On the evening of 10 January, the Kandahar airport was attacked by small arms fire just as the first planeload of 20 detainees took off.²⁶²

As US-held detainees in Afghanistan were transferred to GTMO, lawyers in the White House, State Department, the OSD, and Joint Chiefs debated their status and classification under the law with both the legal and intelligence camps making their points known to decision makers. Because they were captured on the battlefield,

²⁵⁹ Karen Greenberg, *The Least Worst Place*, (Oxford: Oxford Press, 2009), pp. 2-3

²⁶⁰ *Ibid.*, pp. 4-6.

²⁶¹ Author Unknown, 'US to hold detainees at Guantanamo Bay,' *CNN*, 28 December 2001

²⁶² Author Unknown 'Continuing Operations 13 December 2001 to 26 February 2002,' *The Strategy Page*, 10 July 2010

prisoners were initially labelled ‘enemy fighters captured in war’, but that was a temporary status. The Bush Administration determined that legally, the Geneva Conventions of 1949 did not apply to Al-Qaeda since they were not a party to the agreement. Afghanistan, on the other hand, had signed the Convention, but some lawyers in the administration felt that because the government of King Mohammed Zahir Shah no longer existed, the Taliban regime was illegitimate, operating a failed state, and did not meet the legal burden of the signatories.²⁶³

At the Pentagon, CJCS General Richard Myers strove to convince Rumsfeld the Geneva Conventions were the ‘gold standard’, and key to US military culture. He was adamant all US held detainees be treated according to the fullest measure of the Conventions. Rumsfeld agreed.²⁶⁴

Under Secretary of Defence for Policy Douglas Feith argued that applying the Convention’s standards to Al-Qaeda and Taliban prisoners was not the same as deciding that Taliban detainees were entitled to POW status. Under the Conventions, in order for captured soldiers to merit POW status, they must fight overtly, respect non-combatants, wear recognisable uniforms, carry arms openly, fight under a chain of command, and respect the laws of war. POW status was a privilege granted only to lawful combatants as an incentive for following the internationally accepted rules of warfare. Feith contended that Al-Qaeda and the Taliban did not meet this standard but they should be given humane treatment as called for in the Conventions.²⁶⁵ POW privileges not accorded to the detainees included: the rights to keep their ‘effects used for feeding’, be ‘associated with the preparation of their meals’, (have KP privileges/duties), be provided with mess halls, run canteens and manage the profits, be provided with sports and games, but they would also be required to salute officers of the detaining power. Most importantly, POWs were protected from ‘physical or mental torture’, and ‘any

²⁶³ Feith, pp. 160-161

²⁶⁴ Rumsfeld, p. 563

²⁶⁵ Feith, pp. 161-163

form of coercion' to secure from them information of any kind whatever. Those who refused to answer were not to be 'threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind'.²⁶⁶

The classification debate over terrorist and non-nation state actors was not new. In the 1970s, several third world liberation movements fought to obtain recognition as legitimate combatants and be awarded the status of POW when captured. Representatives from President Gerald Ford's Administration attended talks to amend the Conventions and President Jimmy Carter signed the two new protocols.²⁶⁷ Protocol 1, articles 1, 44 and 45, broadened the scope of those who traditionally received POW status and legitimised those 'fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination'.²⁶⁸

In 1987, President Ronald Reagan ruled against ratification of Protocol 1 because he felt it would have granted the same rights to guerrilla-insurgent fighters and terrorists as nation state combatants who followed the laws of war.²⁶⁹ When the Bush Administration looked for guidance on classification the State Department's legal advisor, William Taft wrote 'the lawyers agree that al Qaeda or Taliban soldiers are presumptively not POWs'. Secretary of State Colin Powell, a moderating voice in the administration due to his military background, agreed that the Taliban and Al-Qaeda should not be granted POW 'privileges and benefits', but the US should still support the Conventions.²⁷⁰

The US could have followed the model crafted by Major General George Prugh during the Vietnam War and recognised the Taliban as the legitimate government of Afghanistan and then state that Al-Qaeda forces were a proxy force of the Taliban and

²⁶⁶ Geneva Conventions Available at: www.icrc.org, Accessed 4 October 2010

²⁶⁷ Author Unknown, 'Hijacking the Geneva Conventions,' *WP*, 18 February 1987

²⁶⁸ 'Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I),' 8 June 1977

²⁶⁹ Author Unknown, 'Denied: A Shield for Terrorists,' *NYT*, 17 February 1987

²⁷⁰ Jack Goldsmith, *The Terror Presidency*, (NYC: W. R. Norton Company, 2007), pp. 113-114

had the same rights as government Taliban forces. This would have been similar to the US recognising the North Vietnamese government and granting the *Viet Cong* the same rights as regular prisoners in accordance with the principles of the Geneva Conventions.²⁷¹ Had Reagan signed protocol 77, it would have granted Convention rights to foreign terrorist organisations such as Al-Qaeda.

To settle the issue of detainee classification and status, President Bush met with the National Security Council (NSC) on 4 February 2002. National Security Advisor Condoleezza Rice advocated treating detainees according to the principles of the Geneva Conventions regardless of their status as POWs. Attorney General John Ashcroft disagreed. He believed strict adherence to the Conventions would impede the interrogation process since the Conventions clearly stated prisoners could not be pressure into talking. The President agreed with Rice.²⁷²

On 7 February, White House spokesman Ari Fleischer announced the White House position on detainees: the Geneva Conventions would apply to the conflict in Afghanistan against the Taliban but not the worldwide conflict against Al-Qaeda. The Taliban and Al-Qaeda detainees would not be granted POW status, as they did not meet the standard of the Geneva Conventions, but they would be treated 'humanely and consistent with the principles of the Geneva Convention'.²⁷³ As to POW status, he explained:

To qualify as POWs under Article 4, al Qaeda and Taliban detainees would have to have satisfied four conditions: They would have to be part of a military hierarchy; they would have to have worn uniforms or other distinctive signs visible at a distance; they would have to have carried arms openly; and they would have to have conducted their military operations in accordance with the laws and customs of war . . . The war on terrorism is a war not envisaged when

²⁷¹ Major General George S. Prugh, *Law At War: Vietnam 1964-1973*, (Washington, DC: US Government Printing Office, 1975), pp. 66-68

²⁷² Feith, p. 164

²⁷³ Ari Fleischer, '58. *White House Press Secretary announcement of President Bush's determination re legal status of Taliban and Al Qaeda detainees*, 7 February 2002

the Geneva Convention was signed in 1949. In this war, global terrorists transcend national boundaries and intentionally target the innocent.²⁷⁴

This announcement supported the official DOD policy implemented by Rumsfeld in his 19 January memorandum reiterating that the Taliban and Al-Qaeda were not entitled to POW status under the Geneva Conventions, but they were still to be treated humanely and consistently with the Geneva Conventions;²⁷⁵ basically the provisions of common article three of the conventions but not actually classifying them under Geneva. The detainees would receive food, clothing, shelter, medical treatment, religious books, correspondence materials, toiletries, and clothing, but they would not have access to a canteen to buy food, soap, and tobacco, receive monthly pay, musical instruments, and scientific equipment as called for in the Geneva Conventions.²⁷⁶

In Afghanistan, interrogation and detention operations remained an integral part of the mission. The Pentagon's plan was for TF-500 to collect tactical battlefield information vital to troops on the ground, then send detainees to GTMO for long-term holding and strategic exploitation. CENTCOM issued criteria for capturing and holding detainees: all Al-Qaeda prisoners, Taliban leaders, non-Afghan Taliban foreign fighters, anyone deemed a threat to US interests, anyone deemed to have intelligence value, and anyone who may be subject to prosecution in the future should be detained.²⁷⁷

Interrogators at the Kandahar STHF categorised each detainee according to these guidelines and sent the list to CFLCC at Camp Doha in Kuwait where a detainee review board (DRB), a HDC phase four mechanism, decided which detainees would be transferred to GTMO.²⁷⁸ The DRB members consisted of Army intelligence, MPs,

²⁷⁴ Ibid.

²⁷⁵ Donald Rumsfeld, Secretary of Defense, *Memo for the Chairman of the Joint Chiefs of Staff Regarding the Status of Al Qaida and Taliban*, (Washington DC: DOD, 19 January 2002)

²⁷⁶ Michael Ratner and Ellen Raye, *Guantanamo: What the World Should Know*, (White River Junction, VT: Chelsea Green, 2004), pp. 147-148

²⁷⁷ Mackey and Miller, p. 85

²⁷⁸ Andy Worthington, Author Interview, London, UK, 28 October 2009

civilian agencies, and the FBI. Each group had its own motive for wanting prisoners moved to GTMO, but once a detainee was put on the transfer list by the CFLCC DRB and consigned into Army bureaucracy, it was next to impossible to have him removed from a transfer flight manifest.²⁷⁹

Even as detainees were removed, others continued to arrive at the Kandahar STHF. The TF-500 mobile interrogation team screened thousands of Northern Alliance prisoners at Sheberghan Prison and sent all non-Afghan detainees to Kandahar. Others were captured by the Pakistani military or by Coalition SOF TF-Hatchet who worked alongside the Northern Alliance.²⁸⁰ Early in the war, SOF rarely turned capture reports over to interrogators explaining the circumstances surrounding the detainees' capture. This massive influx of prisoners without paperwork was a huge problem for interrogators, who typically had to begin questioning by asking the detainee why he thought he had been detained.²⁸¹ This gave the prisoners a gross advantage. Of course, interrogators assumed if SOF had someone in custody, it was for good cause, but they quickly determined that many non-combatants had been indiscriminately scooped up as well.²⁸²

The CIA, also known as the 'other government agency', (OGA)²⁸³ dumped detainees off at the STHF. They ran their own interrogation facility in Kabul and when they finished with their prisoners, they would transfer them to the Kandahar STHF.²⁸⁴ Their initial facility was constructed out of shipping containers set up on the corner of the base at Bagram surrounded by concertina wire,²⁸⁵ but they eventually moved to a ten-acre abandoned German built brick factory warehouse just north of the Kabul business district.

²⁷⁹ Mackey and Miller, pp. 85, 175

²⁸⁰ Ibid., p. 114

²⁸¹ Ibid., pp. 254, 256

²⁸² Ibid., p. 115

²⁸³ David Leigh, 'Afghanistan war logs: Secret CIA paramilitaries' role in civilian deaths,' *The Guardian*, 25 July 2010

²⁸⁴ Mackey and Miller, pp. 114-115, 149

²⁸⁵ Dana Priest, 'CIA Holds Terror Suspects in Secret Prisons,' *WP*, 2 November 2005

Codenamed the ‘Salt Pit’, in addition to a prison and interrogation centre, it was also used to train the new Afghan CT force.²⁸⁶ It became the first ‘black’ detention site authorised under the 17 September 2001 presidential finding signed by President Bush granting the CIA the power to prosecute the GWOT. The finding allowed for the creation of a global network of ‘black’ detention sites to house terrorists seized by the CIA as part of their extraordinary rendition programme.²⁸⁷ In addition, Bush signed a memorandum of notification that allowed the CIA to conduct renditions with no prior approval from the White House, Department of Justice (DOJ), or State Department for the sole purpose of transferring prisoners to other countries for detention and interrogation.²⁸⁸

The rendition of suspects from foreign countries to the US or from one state to another was upheld in 1886 by the Supreme Court ruling in *Ker v. Illinois*. Subsequent rulings have supported its application to suspects apprehended in foreign countries. The practice of extraordinary rendition, ‘the transfer of the suspect not back to the United States but to a third country, usually the suspect’s native home, for the incarceration and imprisonment there’ in order to be interrogated under laws not applicable in the US was a new adaptation of the practice.²⁸⁹

The origin of the rendition programme dates back to National Security Directive 77 (NSD) signed by President George H. W. Bush in 1992, which stated ‘return of suspects by force may be affected without the cooperation of the host government’.²⁹⁰ Under President Bill Clinton, the programme was expanded on the basis of Presidential Decision Directive 39 signed 21 June 1995, which said:

²⁸⁶ Dana Priest, ‘CIA Avoids Scrutiny of Detainee Treatment,’ *WP*, 3 March 2005

²⁸⁷ Trevor Paglen and A. C. Thompson, *Torture Taxi*, (Hoboken, NJ: Melville House), pp. 22-23, 25

²⁸⁸ Stephen Grey, *Ghost Plane*, (NYC: St. Martins, 2007), p. 149

²⁸⁹ *Ibid.*, p. 135

²⁹⁰ *Ibid.*, p. 136

When terrorists wanted for violation of U.S. law are at large overseas, their return for prosecution shall be a matter of the highest priority and shall be a continuing central issue in bilateral relations with any state that harbors or assists them.²⁹¹

Because the Clinton Administration had cut the intelligence budget to 20 to 30 per cent from the previous administration²⁹² (US \$26.7 billion in 1997²⁹³) and refused to exploit sources with questionable records, the CIA was forced to create the extraordinary rendition programme in 1995 to outsource the job of capturing, interrogating, and imprisoning terrorists.²⁹⁴ In 1998, the CIA realised the cuts had gone too far and requested funds to restore its core HUMINT capabilities.²⁹⁵ Until 2007, the total US intelligence budget was classified; in 2011, it was estimated at more than US \$80 billion.²⁹⁶

The 'Salt Pit' building was labelled as an Afghan Military area and considered a host nation facility, but it was managed and financed by the CIA.²⁹⁷ While the agency had a tremendous amount of experience running debriefing facilities during the Cold War interviewing defectors and voluntary walk-ins, CIA interrogators were not accustomed to dealing with non-willing participants.²⁹⁸ Historically some CIA personnel had been trained to conduct hostile interrogations as described in the 1963 Directorate of Operations KUBARK counterintelligence interrogation document.²⁹⁹ In general however, interrogating resistant sources was not their mission.³⁰⁰ Few agents were trained to conduct counterterrorism interrogations.³⁰¹ The CIA was woefully

²⁹¹ Ibid.

²⁹² Shawn Zeller, 'The intel numbers game,' *Tampa Bay Times*, 19 November 2007

²⁹³ Brian Clappitt, 'Intelligence Budget Request Revealed,' *Harvard National Security Journal*, 23 February 2011

²⁹⁴ Grey., p. 138

²⁹⁵ James Risen, 'Getting Back to Basics, C.I.A. Is Hiring More Spies,' *NYT*, 27 June 1998

²⁹⁶ Clappitt

²⁹⁷ Paglen and Thompson, pp. 132-133

²⁹⁸ Antonio Mendez, Author Interview, Fayetteville, NC, 13 August 09

²⁹⁹ *KUBARK Counterintelligence Interrogations*, (Langley, VA: CIA, 1963)

³⁰⁰ Mendez Interview.

³⁰¹ Robert Baer, Author Interview, Fayetteville, NC, 3 April 2009

inexperienced running a prison for HVDs and because few seasoned agents wanted to be involved, the task fell to relatively junior officers.³⁰²

Al-Qaeda members were trained in resistance techniques to help them navigate detention and interrogation. This information gave them the advantage over their captors at the STHF. In February 2002, when US forces entered the *Al-Farooq* Al-Qaeda training camp abandoned when the Taliban government fell, they collected many documents including a 60-page photocopied manual.³⁰³

The pages were similar to the last two chapters of an official Al-Qaeda training manual recovered in 2000 in Manchester, England. Discovered in the computer files of a known Al-Qaeda cell member, its contents were used as evidence in the 2001 trial of terrorists accused of bombing the US Embassies in Kenya and Tanzania.³⁰⁴ The ‘Manchester Document’, as it came to be known, was an ideological guide on how to carry out terrorist operations. Chapters one through 16 covered various tactics, techniques, and procedures from setting up safe houses and forging documents to making bombs and planning assassinations. Chapters 17 and 18 explicitly instructed members on how to behave during detention, interrogations, and judicial proceedings.³⁰⁵

The *Al-Farooq* version was exploited by TF-500 analysts. It had an Al-Qaeda symbol stamped on the cover and the handwritten words: ‘Brothers, this is the book about prisoners’.³⁰⁶ Protocol included passive resistance and instructed those captured to deflect, stall, and delay interrogation for at least 24 hours in order to give Al-Qaeda time to adjust their plans. It instructed operatives to use false names and dates from the Islamic calendar to add confusion, tell stories out of sequence, and exploit any bruises

³⁰² Dana Priest, ‘CIA Avoids Scrutiny of Detainee Treatment,’ *WP*, 3 MAR 2005

³⁰³ Mackey and Miller, p. 178

³⁰⁴ Donna Miles, ‘Al Qaeda Manual Drives Detainee Behaviour at Guantanamo Bay,’ *AFPS*, 29 June 2005

³⁰⁵ *Military Studies in the Jihad Against the Tyrants*, Original in Arabic, captured in Manchester, UK, May 2000

³⁰⁶ Mackey and Miller, p. 179

or capture wounds if ICRC representatives were accessible. The manual claimed the US would not use torture because ‘the West didn’t have the stomach for such things’ and condescended ‘they are weak and are not warriors’, but warned that Arab governments would likely engage in torture.³⁰⁷

Some of the Al-Qaeda training appeared to be based on *US Army Field Manual 34-52 Intelligence Interrogation (FM 34-52)*, an unclassified, 177-page US military manual that described interrogation tactics and was available online.³⁰⁸ The manual specifically detailed the rules, techniques, and guidelines interrogators must follow under US and international law.³⁰⁹ *FM 34-52* was the interrogators’ ‘school house manual’ that governed interrogation operations during the early phase of the war.³¹⁰ Interrogators discovered most of the tactics in *FM 34-52* were completely ineffective against the Taliban and Al-Qaeda. At Kandahar, interrogators recognised the prisoners were well trained in every ploy and tactic outlined in the document. According to one senior interrogator:

The most infuriating thing about the Al-Qaeda manual was that its core diagnosis was dead-on: the Americans would keep you in a cage eating halal MREs and giving you showers a couple of times a week. But when it came down to it, you could lie to them, refuse to talk, switch your story from one session to the next, and there wasn’t anything they could do about it. In the long run, that was our strength. But at the time it felt like a terrible weakness.³¹¹

The greatest challenge for HUMINT collection was the dearth of cultural and linguistic understanding among interrogators that severely hampered effective questioning of the detainees.³¹²

³⁰⁷ Ibid., pp. 179-180

³⁰⁸ *Field Manual 34-52: Intelligence Interrogation*, (Washington, DC: Department of the Army, 1992)

³⁰⁹ Ibid.

³¹⁰ *Inquiry Into the Treatment of Detainees in US Custody*, Committee on Armed Services, (Washington, DC: United States Senate, 20 November 2008), p. 149

³¹¹ Mackey and Miller, p. 181

³¹² Ibid., pp. XXV, 472, 450-451

The second phase of the war began in February 2002 with Operation Anaconda. CENTCOM's mission was to flush out the reported 200 to 250 enemy fighters reportedly hiding in the Shah-e-Kot Mountains near the Pakistani border. Historically, the Taliban and Al-Qaeda did not fight in the winter so US forces planned a pre-emptive strike on their strongholds.³¹³ US intelligence detected a significant spike in Arabic cell phone coverage in the region and identified SUVs (the Arab fighters' vehicle of choice) in the area, leading analysts to believe several high value targets (HVTs) might be wintering in the mountains.³¹⁴ CENTCOM war planners strategized contingencies for HVTs to cross the terrain into Pakistan and put forth priority intelligence requirements for interrogators to find out from prisoners at Kandahar STHF which routes the targets would likely use to cross the mountains.³¹⁵

Between 28 February³¹⁶ and 18 March 2002,³¹⁷ a force of 2,000 troops (a mix of conventional, SOF, local, and civilian agencies) attacked in the Shah-e-Kot Mountains.³¹⁸ After the fighting, Afghan villagers said Al-Qaeda forces had been in the area for months preparing for a spring offensive but had recently left for Pakistan. On 6 March, Australian SOF witnessed a small group of well-armed enemy soldiers escorting 'a man with a cane who appeared older than the others' and called in an A-10 air strike, 'but, frustratingly, no allied forces were able to conduct any bomb damage assessment'.³¹⁹ Unconfirmed reports stated Al-Qaeda HVT second in command Ayman Al-Zawahiri suffered a head injury in the attack, but successfully crossed the border.³²⁰ By 18 March, the battle was over and there were reports of 'hundreds of enemy dead,

³¹³ Naylor, p. 65

³¹⁴ Ibid., pp. 92-93

³¹⁵ Mackey and Miller, p. 189

³¹⁶ Naylor, p. 115

³¹⁷ Ibid., p. 377

³¹⁸ Ibid., p. 88

³¹⁹ Ibid., pp. 376-377

³²⁰ Ibid., p. 377

although the Pentagon claimed not to have kept count. No prisoners from Anaconda were delivered to [the] Kandahar [STHF]'.³²¹

On 15 February 2002, GTMO's Camp X-ray reached maximum capacity of 312 detainees. Prisoner transfers from Kandahar ceased until the new Camp Delta facility was completed.³²² The commander of JTF-170 at GTMO, Army General Michael Dunlavey, took advantage of the lull in prisoner transfers to visit the Kandahar STHF. Dunlavey expressed concern over the number of detainees sent to GTMO who should have remained in Afghanistan. He requested an improvement in the evaluation process determining who should be transported.³²³

The set-up at the STHF appalled Dunlavey: prisoners were housed in open holding pens in 12-man groups. They had access to other prisoners to corroborate and strategize, and many of their real identities were still unknown.³²⁴ He recognised the layout of the STHF undermined the interrogators' ability to collect useable intelligence and figure out which prisoners should be sent to GTMO. He realised the existing screening process was 'virtually worthless'.³²⁵

After Dunlavey's visit, CFLCC Camp Doha in Kuwait requested the creation of a dossier for every prisoner at the Kandahar STHF as well as a recommendation on the holding status of each detainee. Some were to be sent to GTMO, others held by the Afghan government, and the rest were to be sent home.³²⁶ Interrogators began making recommendations on which prisoners to send home and CFLCC staffers reviewed the requests, but instead of following the recommendations, they decided to send all the

³²¹ Mackey and Miller, p. 205

³²² Ibid., p. 217

³²³ Ibid., p. 221

³²⁴ Michael Dunlavey, Author Interview, Ashburn, VA, 14 March 2009

³²⁵ Ibid.

³²⁶ Mackey and Miller, pp. 220-221

detainees to GTMO.³²⁷ No officer wanted to be blamed for signing a release order on a detainee who ended up right back on the battlefield, so they ultimately kept everyone.³²⁸

Camp Delta, the new detention facility at GTMO, opened on 29 April 2002. Prisoners from Camp X-ray and the Kandahar STHF were transported to Camp Delta and the STHF was ordered to shut down.³²⁹ Detainees in Afghanistan hereafter were processed at Bagram. Although several members of TF-500 were transferred to assist with operations there many were sent home instead of to GTMO where they were desperately needed to help with the barrage of new arrivals.³³⁰ Only one veteran of TF-500 was sent to GTMO.³³¹

Bagram airfield was built in 1976 and later used by the Soviets as a staging area during their occupation of Afghanistan.³³² It had survived decades of war and by the time TF-500 started using an old machine shop for detention operations in autumn 2001, it was a run down, cement-block building with metal sheets covering the windows.³³³ The facility, known as the Bagram Collection Point (BCP), had been fitted with five large, wire, holding pens and six plywood isolation cells. It held between 40 and 80 prisoners and was used as a screening facility where interrogators determined whether to forward detainees to GTMO or release them.³³⁴

There were stairs on each side of the facility with a landing overlooking the main prison area. On the first floor were six rooms used for administration and interrogation. The rooms were spartan, concrete enclosures with plywood over the windows and contained a wooden table and cheap plastic chairs.³³⁵ The cells were five by ten metres with a bucket toilet and blankets for bedding. Each cell housed between

³²⁷ Ibid., p. 222

³²⁸ Ibid., p. 250

³²⁹ Ibid., p. 236

³³⁰ Ibid., p. 229

³³¹ Military #1, Author Phone Interview, 2 November 2010

³³² Duncan Campbell and Suzanne Goldenberg, 'They said this is America . . . if a soldier orders you to take off your clothes, you must obey,' *The Guardian*, 23 June 2004

³³³ Tim Golden, 'In U.S. Report, Brutal Details of 2 Afghan Inmates' Deaths,' *NYT*, 20 May 2005

³³⁴ Ibid.

³³⁵ Moazzam Begg, *Enemy Combatant*, (London: New Press, 2006), p. 137

ten and 15 prisoners and was separated from other cells by a wire fence. The cellblock was in the middle of the hangar with guards on duty outside.³³⁶ Prisoners at the BCP were much more hostile than those who had been processed through the Kandahar STHF. Ideologically, they were aligned more closely with Al-Qaeda and the Taliban. Many had eluded US forces initially and had been caught re-entering the country from Pakistan. Detainees threatened and cursed interrogators and spit at them; these factors combined to make the bleak facility and harsh environment even more difficult.³³⁷

The Geneva Conventions required signatories to the treaties operate a national information bureau to track prisoner information. On 12 August 1949, the DOD created the Centre for War Prisoner Information. During the first Gulf War, (1990 - 1991), the centre was known as the National Prisoner of War Information Centre. On 7 January 2002, the centre's name was official changed to the National Detainee Reporting Centre.³³⁸ This renaming of the centre was to more accurately reflect the current nature of the war where captured prisoners were all detainees but did not necessarily qualify for POW status.

The US detention system assigned every prisoner a ten-digit capture sequence internment serial number (ISN).³³⁹ Additionally, at Bagram the interrogators assigned each prisoner a source number in order to prevent prisoners from being identified in reports when they provided useable intelligence. The CIA used their own internal numbering system, as did the FBI, and the DEA, so when detainees were discussed at interagency levels, it was often a challenge to determine which reports referred to whom. If prisoners were transferred from Kandahar, their numbers did not correspond with their order of arrival at Bagram. GTMO assigned detainees two different numbers.

³³⁶ Campbell and Goldenberg

³³⁷ Mackey and Miller, pp. 247-248

³³⁸ Colonel Craig Essick, *Information Brief Bethesda Law Enforcement IT Conference*, (Bethesda, MD: National Detainee Reporting Center, May 2009), slide 3

³³⁹ Ibid., slide 4, 13

Once detainees were ‘wrapped in this red tape, it was almost impossible to extricate them’ from the system.³⁴⁰

In the hope of clearing up the confusion, TF-500 leadership created a prisoner category called ‘persons under US control’ or PUC. Under this new designation, prisoners could be held for 14 days in a temporary screening status. If interrogators felt there was cause to hold a prisoner beyond two weeks, he would then be officially entered into the system and assigned an ISN. If not, the prisoner could be released through the Provost Marshal’s Office. This alleviated the burden of prisoners clogging the system and eventually eight out of ten prisoners were released from the BCP.³⁴¹

At the Kandahar STHF, interrogators realised much of their most useable intelligence was collected at the end of lengthy interrogations when prisoners were tired and more prone to let information slip. It was at this time that the adjusted sleep routine (ASR) was approved for use on resistant prisoners. This was the first time the methodical use of a non *FM 34-52* interrogation technique was introduced. Interrogators had to get permission from the OIC of the ICE and were required to follow the same sleep schedule as the detainee under ASR interrogation, but they were usually approved.³⁴²

The group that replaced TF-500 in July 2002 was comprised of interrogators and linguists: 13 from the 519th MI Battalion of the 525th MI Brigade out of Fort Bragg, North Carolina and six reservists from the 300th MI Brigade, Utah Army National Guard. The new ICE OIC was 32-year old Army Captain Carolyn Wood, who managed interrogations at the BCP until December 2003.³⁴³ Eventually, she would be blamed not only for what took place under her command in Afghanistan but also Iraq.

³⁴⁰ Mackey and Miller, pp. 249-250

³⁴¹ Ibid., pp. 250-252, 458

³⁴² Ibid., pp. 288-289, 355

³⁴³ Golden

One of the costliest mistakes at the BCP was the excessively brief overlap in transition time between experienced and incoming interrogators. When the new interrogators arrived they were only given four days to train with seasoned veterans before they went home. In effect, the new interrogators started from scratch having to learn the detainees' files, what approaches worked best, and important cultural lessons. This was a grave handicap as they faced detainees already seasoned by many months in captivity.³⁴⁴

Of his first visit to the BCP, Army Specialist Damien Corsetti of the 519th said:

The smell's quite atrocious. It was a combination of the prisoners only having a bath once week, the open sewage barrels that were in the prison . . . it was a combination of many things. It was quiet. That was the other thing that hit you when you walked in, how quiet it was.³⁴⁵

CFLCC in Kuwait was replaced by an in-country command, JTF-180. They established headquarters in Bagram and commanded all US operations in Afghanistan after May 2002.³⁴⁶ Lieutenant General Dan McNeill commanded JTF-180. His office was near the BCP interrogation facility.³⁴⁷ His tenure was marked by controversy over the treatment of detainees and the interrogation techniques used.³⁴⁸

From autumn 2001, Special Mission Unit (SMU)-TF operators participated in battlefield screening and questioning of detainees in support of their assigned mission but left tactical interrogations to the JTF-180 personnel.³⁴⁹ In autumn 2002, the SMU-TF conducted a study of interrogation operations at the BCP and GTMO to determine whether they should conduct their own interrogations and what techniques should be

³⁴⁴ Mackey and Miller, pp. 455-456

³⁴⁵ Aaron Leonard, 'Breaking silence about torture,' *NYU News*, 7 April 2009

³⁴⁶ *Inquiry Into the Treatment of Detainees in US Custody*, Committee on Armed Services, (Washington, DC: United States Senate, 20 November 2008), p. 149

³⁴⁷ Aaron Leonard, 'Breaking silence about torture,' *NYU News*, 7 April 2009

³⁴⁸ Carlotta Gall, 'Threats and Responses: Prisoners; U.S. Military Investigating Death of Afghan in Custody,' *NYT*, 4 March 2003

³⁴⁹ *Inquiry Into the Treatment of Detainees in US Custody*, Committee on Armed Services, pp. x, 148

permitted.³⁵⁰ On 26 October, the assessment team told the SMU commander in Afghanistan that interrogation methods outlined in *FM 34-52* were not producing actionable intelligence and were vulnerable to Al-Qaeda resistance training. The team recommended new techniques be introduced including: degradation by strip search, sensory deprivation by hooding, sensory overload through the use of light, darkness, noise, and dogs, and manipulation of environment with cold, heat, and water. In essence, the assessment team indicated interrogators were outmatched by the sophistication of the Al-Qaeda detainees.³⁵¹

The team also asserted JTF-180 was more focused on detention rather than interrogation, and requested permission from JTF-180's commander to run their own interrogation facility within the BCP. The SMU facility would employ advanced techniques of psychological and physical stress as well as deception with the goal of leading detainees to a state of learned helplessness in order to increase compliance.³⁵² The confused state of detention policy and operations led to more reliance on operational law attorneys who constantly advised combat leaders on the best COA.³⁵³

In November 2002, the CIA put an inexperienced, first-tour officer named 'Matt' in charge of the 'Salt Pit'. He ordered guards to strip an uncooperative Afghan detainee named Gul Rahman.³⁵⁴ Rahman was suspected of working as a go-between for the terrorist Gulbuddin Hekmatyar and Al-Qaeda. The CIA tracked his cell phone to the time of his 29 October capture and hoped to obtain information on Hekmatyar's location.³⁵⁵

³⁵⁰ Ibid., p. 149

³⁵¹ Ibid., pp. 149-150

³⁵² Ibid., p. 151

³⁵³ Military #25, Author Interview, Ashburn, VA, 5 August 2009

³⁵⁴ Adam Goldman and Matt Apuzzo, 'At CIA, grave mistakes, then promotions', *AP*, 9 February 2011

³⁵⁵ Adam Goldman and Pete Yost, 'Justice to Probe Death of 2 CIA Detainees,' *AP*, 1 July 2011

Rahman was dragged on concrete and chained to the floor of his cell without a blanket.³⁵⁶ Temperatures dropped overnight and he froze to death in the early hours of 20 November.³⁵⁷ The CIA briefed the heads of the House and Senate intelligence committees to explain what had happened.³⁵⁸

A CIA Inspector General inquiry found ‘Matt’, a former Naval Intelligence Officer, had exercised ‘poor judgement’ in leaving Rahman in the cold. A Justice Department investigation found ‘Matt’ had previously requested heaters for the prison and asked for additional help from headquarters and from ‘Paul’, the CIA Afghanistan Station Chief, and had been ignored. Based on the Justice Department’s three-year legal review, ‘Matt’ was disciplined but not ‘Paul’ or CIA management. Ultimately the CIA did nothing.³⁵⁹

In December 2002, two prisoners died in US military custody at the BCP. Private First Class Willie Brand, an MP from the 377th was charged in the deaths of detainees Habibullah and Dilawar, who were chained to their cells overnight with their hands above their heads. Of the 28 MPs and interrogators investigated, 15 were charged with detainee abuse or mistreatment including repeated ‘compliance blows’ (kneeing detainees in the leg), a tactic that ‘became an accepted way of dealing with detainees who were considered combative’.³⁶⁰ At Brand’s court-martial hearing, he admitted he had been trained to use ‘minimum force’, but was shown the knee strike technique by an outgoing platoon of MPs to be used ‘as a matter of common practise’ and said he had used it on more than 20 other prisoners during his ten months in Afghanistan.³⁶¹

³⁵⁶ Dana Priest, ‘CIA Avoids Scrutiny of Detainee Treatment,’ *WP*, 3 MAR 2005

³⁵⁷ Goldman and Yost

³⁵⁸ Priest

³⁵⁹ Goldman and Apuzzo

³⁶⁰ Elise Ackerman, ‘Reservist: Knee blows that killed 2 detainees were approved,’ *Lexington Herald-Leader*, 26 March 2005

³⁶¹ *Ibid.*

These deaths underscored the greatest fears of the judicial-Geneva Conventions school-of-thought that without strict adherence to the law, such abuses would take place. After the deaths, both SMU-TF and JTF-180 began developing written guidelines. The SMU-TF Judge Advocate General (JAG) officer advised TF personnel not to stray from standard techniques and reiterated the US Army standards for humane treatment. On 10 January 2003, the SMU-TF approved its first SOP for the war in Afghanistan; beyond *FM 34-52*, four others techniques were approved including: isolation, multiple interrogators, stress positions, and sleep deprivation.³⁶² Development of the SOP was influenced by Rumsfeld's December 2002 approval of the same techniques for use in GTMO.³⁶³ By 2004, a special military prison facility to handle HVDs separate from the BCP and the CIA facility was in operation. An enhanced interrogation programme facility was housed in a specially designed building with holding cells, open areas, and rooms made of wood and steel used for interrogations. Inside the interrogation rooms, there were 'holding points' for shackling detainees' arms and legs in stress positions.³⁶⁴

On 10 December 2002, the DOD published guidelines regarding the release or transfer of detainees who did not meet the Enemy Combatant status threshold. Detainees were interviewed within 90 days of capture and then yearly. If a detainee was deemed to be releasable, his case was reviewed by all relevant organisations.³⁶⁵

Under the direction of the Secretary of Defence (SECDEF), the USD for Policy (P) was responsible for detainee policy and guidelines. The USD(P) delegated detention matters to the Assistant Secretary of Defence for Special Operations and Low Intensity Conflict (ASD SOLIC), who created a Detainee Policy Group to be the focal

³⁶² *Inquiry Into the Treatment of Detainees in US Custody*, Committee on Armed Services, pp. 152-153

³⁶³ William Haynes, General Counsel, Office of the Secretary of Defense, *Action Memo for the Secretary of Defense Regarding Counter-Resistance Techniques*, (Washington, DC: DOD, 27 November 2002)

³⁶⁴ Anthony Shaffer, *Operation Dark Heart*, (NYC: St. Martin's Press, 2010), pp. 257-259

³⁶⁵ Paul Wolfowitz, Deputy Secretary of Defense, *Implementing Guidelines for the Release or Transfer of Detainees Under US Department of Defense Control to Foreign Government Control*, (Washington DC: DOD, 10 December 2002), pp. 2-3

point for the release and transfer of detainees. The group forwarded all relevant files to the Secretary of the Army, the DOD General Counsel, and the Director of the Joint Staff. In addition, they provided notice to the Department of State, Office of War Crimes Investigations, and provided a representative to the Interagency Experts Group.³⁶⁶

The Detainee Policy Group served an important function; they were responsible for reviewing detainee files and issuing legal opinions for each detainee. They made their files available for review by the Interagency Experts Group, but ultimately controlled the agenda and maintained authority for files and action items.³⁶⁷ Other parties involved in the release of detainees included: the ASD for Public Affairs, the DOD General Counsel, the Director of the Joint Staff, the Combatant Commanders, the Secretary of the Army, and the ICRC (through the National Detainee Reporting Centre).³⁶⁸

On 15 January 2003, Rumsfeld rescinded his approval of additional interrogation techniques pending further review.³⁶⁹ He ordered a working group of experts from the Joint Staff, the DOD General Counsel's office, the office of the USD(P), and the military departments to study the best way forward.³⁷⁰ Chaired by USAF General Counsel Mary Walker, they reviewed a spectrum of 36 interrogation techniques ranging from the direct approach to water-boarding.³⁷¹

Water-boarding was used by the military in SERE (survive, escape, resist, evade) training, but was never authorised or used as a technique by military interrogators.³⁷² On 5 February 2008, CIA Director Michael Hayden revealed the names

³⁶⁶ Ibid., p. 8

³⁶⁷ Ibid., p. 9

³⁶⁸ Ibid., pp. 9-12

³⁶⁹ Donald Rumsfeld, Secretary of Defense, *Memo for Commander USSOUTHCOM Regarding Counter Resistance Techniques*, (Washington DC: DOD, 15 January 2003)

³⁷⁰ Donald Rumsfeld, Secretary of Defense, *Memo for the General Counsel for the Department of Defense Regarding Detainee Interrogations*, (Washington, DC: DOD, 15 January 2003)

³⁷¹ Lippold Interview.

³⁷² Rumsfeld, p. 585

of the only three detainees ever water-boarded in US custody.³⁷³ Senior Al-Qaeda leaders Zayn al-Abidin Muhammed Husayn (also known as Abu Zubayda), Abd-al-Rahim Al-Nashiri, and Khalid Sheikh Mohammed (KSM) were all subjected to water-boarding as part of the CIA's enhanced interrogation programme.³⁷⁴

In September 2002, the CIA briefed four members of Congress including California Representative Nancy Pelosi regarding the agency's overseas detention locations and enhanced interrogation techniques. Two of the members 'asked the CIA to push harder' and asked 'if the methods were tough enough'. The CIA privately briefed members of Congress approximately 30 times detailing the specifics of the interrogation programme. Lawmakers raised no formal objections between 2002 and 2003 when the water-boarding technique was in use. In 2005, the programme was leaked to the news media.³⁷⁵ At that time, the CIA ceased coercive interrogation methods,³⁷⁶ and Arizona Senator John McCain authored the Detainee Treatment Act prohibiting 'cruel, inhuman, or degrading treatment or punishment'. It applied to all prisoners in US custody, including those in GTMO, Afghanistan, and Iraq.³⁷⁷ In a 2011 interview, Vice President Dick Cheney said: 'I would strongly support using it [waterboarding] again if circumstances arose where we had a high-value detainee and that was the only way we could get him to talk'.³⁷⁸

In November 2005, ABC News investigated the enhanced interrogation programme and learned of six authorised techniques. They included: the attention grab (grabbing the shirt front of a detainee and shaking him), the attention slap (an open-handed slap to cause pain and fear), the belly slap (a hard open-handed slap to the

³⁷³ Mikkelsen, Randall, 'CIA says used waterboarding on three suspects,' *Reuters*, 5 February 2008

³⁷⁴ *Special Review, Counterterrorism Detention and Interrogation Activities: September 2001 – October 2003*, CIA Office of Inspector General (Langley, VA: CIA, 7 May 2004)

³⁷⁵ Joby Warrick and Dan Eggen, 'Hill Briefed on Waterboarding in 2002: In Meetings, Spy Panels' Chiefs Did Not Protest, Officials Say,' *WP*, 9 December 2007

³⁷⁶ Mark Mazzetti and Scott Shane, 'Interrogation Debate Sharply Divided Bush White House,' *NYT*, 4 May 2009

³⁷⁷ *Detainee Treatment Act of 2005*, Available at: www.pegc.us/detainee_act_2005.html, Accessed 5 January 2011

³⁷⁸ Author Unknown, 'No Regrets About Waterboarding,' *AP*, 25 August 2011

stomach), the long-time standing (detainee is forced to stand, handcuffed, with feet shackled to an eye bolt on the floor for 40-plus hours to cause exhaustion and sleep deprivation), the cold cell (detainee stands naked in a 10°C cell and is doused with water from time to time), and water-boarding (a detainee is strapped to an inclined board, feet raised and head slightly below the feet, cellophane is wrapped over the face, and water is poured over him to create the sensation of drowning).³⁷⁹ In 2007 the ICRC reported that in their interviews with the 14 CIA HVDs at GTMO that these techniques were used on them.³⁸⁰

In 2009, President Obama ordered the declassification of a top-secret memorandum that detailed the ten techniques authorised for use by the CIA in 2002. They included: water-boarding, the attention grab, walling, facial hold, facial slap, cramped confinement, wall standing, stress positions, sleep deprivation, and the use of insects.³⁸¹

The two psychologists who created the CIA's enhanced interrogation programme, Dr. Bruce Jessen and Dr. James Mitchell, were former military officers with experience teaching military personnel to 'survive behind enemy lines and resist enemy interrogation tactics', but neither had expertise conducting offensive, US-style interrogations or any training specific to Al-Qaeda. The water-boarding technique added as the final step in their interrogation programme was more intense than the shorter water-boarding sessions used to train military personnel in their SERE classes.³⁸² Anticipating possible fallout, the CIA granted both psychologists indemnity

³⁷⁹ Brian Ross and Richard Esposito, 'CIA's Harsh Interrogation Techniques Described,' *ABC News*, 18 November 2005

³⁸⁰ Geoff Loane, Head, Regional Delegation for the US and Canada, *Report of High Value Detainees Transferred to GTMO in September 2006*, (Washington, DC: ICRC, 14 February 2007)

³⁸¹ Michael Scherer, 'Bush Torture Memo Approved Use of Insects,' *Time*, 16 April 2009

³⁸² Brian Ross and Matthew Cole and Joseph Rhee, 'Waterboarding, Interrogations: The CIA's \$1,000 a Day Specialists,' *ABC*, 30 April 2009

and as much as US\$5 million dollars in paid legal expenses in case they faced professional repercussions.³⁸³

CIA specialists water-boarded Abu Zubaydah 82 times in August 2002; KSM was water-boarded 183 times in March 2003.³⁸⁴ President Bush, the leader of the intelligence-collection camp, personally signed off on the use of the technique for these detainees.³⁸⁵ Zubaydah told interrogators that Islam demanded he resist as long as possible, but water-boarding brought him to the point where he allowed himself to talk. Information gleaned from his interrogations led to the capture of KSM, the architect of 9/11. KSM's sessions with CIA water-boarders also yielded key intelligence including information key to the capture of Riduan Isamuddin (also known as Hambali), the leader of Al-Qaeda in Southeast Asia, whose brother was responsible for the 2002 Bali nightclub bombing that killed more than 200. KSM also divulged critical information on the Al-Qaeda biological weapons programme.³⁸⁶

Though controversial, water-boarding proved useful in preventing attacks and saving lives both in the US and abroad³⁸⁷ Something the judicial-Geneva Conventions camp have a hard time admitting. Although DOJ and CIA lawyers 'conducted a careful legal review' of the entire enhanced interrogation programme and determined it complied with US law, President Bush directed the CIA 'not to use two more extreme interrogation methods, but did not disclose what those were'.³⁸⁸ In May 2010, Assistant Attorney General Jay Bybee, who worked in the DOJ's Office of Legal Counsel, testified that his counsel was intended only for Abu Zubadah and that the CIA had exceeded the limits of what they were authorised to do. The CIA interpreted the DOJ

³⁸³ Author Unknown, 'Officials: CIA gave waterboarders \$5M legal shield,' *AP*, 17 December 2010

³⁸⁴ Matt Apuzzo, 'Unresolved debate in DOJ memos: Does torture work?' *AP*, 21 April 2009

³⁸⁵ George Bush, *Decision Points*, (NYC: Crown, 2010), pp. 168-171

³⁸⁶ *Ibid.*, pp. 169-170

³⁸⁷ *Ibid.*, p. 171

³⁸⁸ Author Unknown, 'Bush on waterboarding: Damn right,' *CNN*, 5 November 2010

counsel to allow use of the same techniques on other detainees who met the same criteria.³⁸⁹

The Justice Department's Office of Legal Counsel advised the CIA that waterboarding was not in violation of US torture statutes³⁹⁰ even though waterboarding had been declared illegal by the US military after WWII during the Japanese war crimes trials³⁹¹ and again in 1983 when a Texas sheriff was sentenced to ten years in prison for using 'water torture' to extract confessions.³⁹²

Harvard Law Professor Alan Dershowitz argued that enhanced interrogation techniques deemed to be torture should be allowed under certain circumstances with a warrant. 'An application for a torture warrant would have to be based on the absolute need to obtain immediate information in order to save lives coupled with probable cause that the suspect had such information and is unwilling to reveal it'.³⁹³ The torture warrant would legally authorise trained interrogators to use techniques not normally allowed. At an 8 June 2004 Judiciary Committee hearing, Democratic New York Senator Chuck Schumer, a member of the party that mostly espoused the judicial-Geneva Conventions approach said:

We ought to be reasonable about this. I think there are probably very few people in this room or in America who would say that torture should never, ever be used, particularly if thousands of lives are at stake. Take the hypothetical: If we knew that there was a nuclear bomb hidden in an American city, and we believed that some kind of torture, fairly severe maybe, would give us a chance of finding that bomb before it went off, my guess is most Americans and most senators, maybe all would say, Do what you have to do. So it's easy to sit back in the armchair and say that torture can never be used. But when you are in the foxhole, it is a

³⁸⁹ Jerry Markon and Peter Finn, 'Ex-Justice official says limits on detainee questionings may have been exceeded,' *WP*, 16 July 2010

³⁹⁰ Jay Bybee, Office of the Assistant Attorney General, Office of Legal Counsel, DOJ, US DOJ, *Memo for John Rizzo Acting General Counsel for the Central Intelligence Agency*, (Washington, DC: DOJ, 1 August 2002)

³⁹¹ Evan Wallach, 'Waterboarding Used to Be a Crime,' *WP*, 4 November 2007

³⁹² *United States of America, Plaintiff-Appellee v. Carl Lee, Defendant-Appellant*, No. 83-2675, United States Court of Appeals, Fifth Circuit, 12 October 1984

³⁹³ Alan Dershowitz, 'Want to Torture? Get a Warrant,' *San Francisco Chronicle*, 22 January 2002

very different deal. And I respect – I think we all respect – the fact the president is in the foxhole every day.³⁹⁴

General David Petraeus, at his CIA director confirmation hearings on 23 June 2011, agreed with this point and said in a ticking time bomb scenario there should be a special exemption to use additional techniques authorised by the President that are not in the Army Interrogation manual.³⁹⁵ In respect to warrants for techniques deemed to be torture, DASD for Detainee Affairs Mathew Waxman said:

When something's illegal, don't expect it to work well in a crisis, if you then suddenly order it. But one virtue that any system of warrants has is giving a set of clear instructions so that those who might be asked to carry out certain tasks have some certainty of, I'm allowed to do this or not, I'm authorised to do this or not, in a crisis here's how the decision will be made. And everybody knows what their job in the system is and who has authority to do what.³⁹⁶

Controversial as they are, the Office of the Director of National Intelligence (ODNI) issued a statement in 2009 that the US detention programme had been critical to the success of the US and allied CT efforts against Al-Qaeda around the globe. Specifically, new threat information was gleaned and locations of Al-Qaeda operatives and safe havens were identified. Detainees reported that coalition CT efforts have degraded the operational capability of the organisation.³⁹⁷

HDC Phase III and IV: Detainee Operations Improve as Corrections are Made

In a 24 January 2003 memorandum, JTF-180 Deputy Staff JAG, Lieutenant Colonel Robert Cotell, enumerated all the methods used by the JTF interrogators after 9/11 and compiled the list of techniques under review by the military. Five additional techniques were included: clothing deprivation, food deprivation, sensory overload, sensory deprivation, and fear of dogs. CENTCOM Combatant Commander Lieutenant General

³⁹⁴ *DOJ Oversight: Terrorism and Other Topics*, Senate Judiciary Committee, 8 June 2004

³⁹⁵ Tim Starks, 'Petraeus Wants Discussion on Emergency', *CQ.com*, 27 June 2011

³⁹⁶ Mathew Waxman, Author Interview, NYC, NY, 24 February 2009

³⁹⁷ Author Unknown, 'Summary of the High Value Terrorist Detainee Program,' *Office of the Director of National Intelligence*, Washington, DC, 19 January 2009

John Abizaid said the techniques in the memorandum were fully reviewed by the Pentagon Working Group.³⁹⁸

The working group described each technique and defined conditions under which they could be used. The first 15 or 16 standard techniques from *FM 34-52* were approved for use with authorisation by the commanders in the field. Techniques 17 through 22 were only permitted by authorisation from the Combatant Commander. The last classification, from 23 to 35, could only be authorised by the SECDEF. The group rejected the last technique; no one in the military approved the use of water-boarding.³⁹⁹ Lawyers in the group focused on strict adherence to the letter of the law. Military staffers in the group with operational backgrounds were in favour of a looser interpretation so personnel in the field would have leeway to accomplish their objectives. The service chiefs were very cautious. They did not like what they felt was a shifting in the sand of policy and were worried about soldiers getting into trouble.⁴⁰⁰

Meanwhile in Afghanistan, while the working group analysed interrogation techniques, JTF-180 and the SMU-TF implemented the techniques listed in the 24 January 2003 memo at the BCP. Cotell later told investigators from the 2005 Vice Admiral Albert Church Commission he knew the SECDEF had rescinded approval on many techniques while they were under review, but since there was no guidance from CENTCOM, CJTF-180 considered them allowable.⁴⁰¹

On 11 April 2003, Deputy CENTCOM Commander Lieutenant General Michael DeLong sent a message to JCS Vice Chairman General Peter Pace requesting approval of the techniques in Cotell's memo. The Chairman of the Joint Staff legal counsel, Captain Jane Dalton, informed CENTCOM's Deputy Staff Judge Advocate Barry Hammill that the techniques would likely only be approved for GTMO. This alarmed

³⁹⁸ *Inquiry Into the Treatment of Detainees in US Custody*, Committee on Armed Services, pp. 155-156

³⁹⁹ Lippold Interview.

⁴⁰⁰ Ibid.

⁴⁰¹ *Inquiry Into the Treatment of Detainees in US Custody*, p.156

interrogators at JTF-180. They believed their ability to complete the mission would be degraded without the use of these techniques. JTF-180 Commander, Lieutenant General McNeill, had specifically authorised the use of techniques playing on individual fears, using black out goggles, deprivation of light and sound, sleep adjustment, threat of transfer to another agency or country, and stress positions.⁴⁰² Even though these techniques were authorised, the FBI was in-country looking for violations of law and detainee abuse.⁴⁰³

On 15 April 2003, the working group submitted their recommendations. It reiterated the guiding principle that detainees be treated humanely and consistent with the Geneva Conventions. It delineated what was authorised and what was not.⁴⁰⁴ In a 16 April memorandum to the Commander of CENTCOM, the SECDEF approved 24 specific interrogation techniques for use strictly at the BCP in Afghanistan. While most of these techniques were already approved in *FM 34-52*, several were new including: change of scenery up, change of scenery down, dietary manipulation, environmental manipulation, sleep adjustment, isolation, and false flag.⁴⁰⁵

The events at Abu Ghraib prison in Iraq in autumn 2003 put all US prison operations under scrutiny including policies in effect in Afghanistan. MPs guarding Iraqis at Abu Ghraib abused, degraded, and photographed prisoners. In January 2004, pictures of the crimes were turned over to Army investigators who launched an inquiry on 16 January.⁴⁰⁶ In February, the Office of the Inspector General of the Army ordered a vigorous investigation into all US-run detention centres in Afghanistan, GTMO, and

⁴⁰² Ibid., pp. 156-157

⁴⁰³ Shaffer, p. 94

⁴⁰⁴ Donald Rumsfeld, *Secretary of Defense, Memo for the Commander, US SOUTHCOM, Regarding Counter-Resistance Techniques in the War on Terrorism*, (Washington DC: DOD, 16 April 2003)

⁴⁰⁵ Donald Rumsfeld, *Secretary of Defense, Memorandum for Commander US Central Command Regarding Counter Resistance Techniques*, (Washington DC: DOD, 16 April 2003)

⁴⁰⁶ Christopher Graveline and Michael Clemens, *The Secrets of Abu Ghraib Revealed*, (Dulles, VA: Potomac Books, 2010), p. 21

Iraq.⁴⁰⁷ Immediately, the Inspector General for JTF-180 began conducting ‘sensing sessions’ with enlisted personnel regarding proper detainee treatment and procedures in preparation for the investigation.⁴⁰⁸ The questioners found that detainee treatment was guided primarily by what soldiers understood from their Geneva Conventions training despite the on-going political discussion revolving around their actual status. More than 12 separate investigations were ultimately launched in the hope of discovering the causes of the abuse in Iraq and to determine if other facilities were struggling.⁴⁰⁹

The Commander of the Combined Forces Command-Afghanistan (CFC-A) Lieutenant General David Barno tasked Commander of Combined Joint Task Force-76 (CJTF-76) Major General Eric Olson to appoint an inspecting officer for the Afghan detention operations review. Deputy Commander CJTF-76 Brigadier General Charles Jacoby was ordered to ‘ascertain the standard of treatment provided to persons detained by US forces throughout the detention process from apprehension to release or long-term confinement’. From 19 May to 26 June, General Jacoby’s team assessed the CFC-A/CJTF-76 detention operations tactics, techniques, and procedures. The report found a ‘near universal understanding’ among the guard force that humane treatment was to be given to all detainees but there was a lack of application of detention standards by the guard force.⁴¹⁰ Between May 2002 and June 2003, JTF-180 was authorised to hold 100 detainees at the BCP; by summer 2003 that number was doubled to 200.⁴¹¹

On 24 February 2004, ASD SOLIC Thomas O’Connell, issued a document entitled ‘Global Screening Criteria for Detainees’ which set forth criteria to follow in order to ship detainees to JTF-GTMO or to keep them in custody in theatre internment

⁴⁰⁷ Admiral A.T Church Report, *Review of Department of Defense Detention Operations and Detainee Interrogation Techniques*, (Washington DC: DOD, 7 March 2005)

⁴⁰⁸ Author Unknown, Memorandum for Commander, CJTF-180, Bagram, Afghanistan, *Subject: Inspector General Sensing Session, Orgun-E Forward Collection Point*, 14 February 2004

⁴⁰⁹ Stimson Interview.

⁴¹⁰ General Charles Jacoby, *CFC A-AO Detainee Operations*, (Kabul, Afghanistan: DOD, 26 June 2004)

⁴¹¹ Jeff Bovarnick, ‘Detainee Review Boards in Afghanistan,’ *The Army Lawyer*, 1 June 2010, p. 17

facilities (TIFs) in other locations.⁴¹² O'Connell included a 22 August 2003 ASD SOLIC document 'Criteria and Guidelines for Screening and Processing Persons Detained by the Department of Defence in Connection with the War on Terrorism'⁴¹³ and an 8 August 2003 document 'Detainee Screening in Afghanistan'.⁴¹⁴ The guidance reiterated that detainees must be screened and meet the specific criteria to be held by the US as an enemy combatant (EC).⁴¹⁵ EC status was given instead of POW distinction, because POW demarcation would have given the detainee additional rights under the Geneva Conventions. An EC was defined as:

Any person that the US or Allied forces could properly detain under the laws and customs of war. For purposes of the war on terrorism, an Enemy Combatant includes, but is not limited to, a member or agent of Al-Qaeda, the Taliban, or another international terrorist organisation against which the United States is engaged in armed conflict.⁴¹⁶

Detainees could also be held if they possessed intelligence of an operational or strategic nature, law enforcement information relevant to an investigation, or if they were deemed a threat to the US or US interests.⁴¹⁷

General Abizaid established a Detainee Review and Screening Team (DRST) for Afghanistan to 'validate the information compiled on each individual for completeness and accuracy'.⁴¹⁸ If a DRST was unable to screen a detainee, a Mobile Detainee Review and Screening Team (MDRST) was requested to conduct the screening. The MDRST determined if the EC would be sent to GTMO or to another US detention facility.⁴¹⁹

⁴¹² Thomas O'Connell, Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, *Action Memo for the Secretary of Defense on Global Screening Criteria for Detainees*, (Washington DC: DOD, 20 February 2004), p. cover letter

⁴¹³ Ibid., p. 1

⁴¹⁴ O'Connell, *Detainee Screening in Afghanistan*, p. 1

⁴¹⁵ O'Connell, *Action Memo for the Secretary of Defense on Global Screening Criteria for Detainee*, p. 3

⁴¹⁶ Ibid., pp. 9-11

⁴¹⁷ Ibid., p. 10

⁴¹⁸ O'Connell, *Detainee Screening in Afghanistan*, p. 1

⁴¹⁹ O'Connell, *Action Memo for the Secretary of Defense on Global Screening Criteria for Detainee*, p. 6

Each EC was assigned an Internment Serial Number (ISN) from the National Detainee Reporting Centre in Washington, DC to assist in tracking; the ISN superseded any other number the detainee had been assigned previously.⁴²⁰ The SECDEF and the CJCS were notified of the results of all screenings (transfers to GTMO or other US facilities) and also when a detainee was suspected of being a citizen of the US or a coalition country, or under 15 years old.⁴²¹ Temporary TIFs were set up to house ECs and administer medical screenings before sending them to long-term detention.⁴²² The ASD SOLIC and the Deputy General Counsel for International Affairs co-chaired a Detainee Assessment Team (DAT) at the Pentagon made up of representatives from the CJCS and DOD to make final determinations regarding the transfer of ECs to GTMO.⁴²³

On 28 June 2004, the US Supreme Court ruled in *Rasul v. Bush* that foreign nationals in custody at GTMO could challenge their detentions in the US civilian court system. The high court's decision reversed an earlier ruling upholding a 1950 Supreme Court precedent, *Johnson v. Eisentrager*, in which detainees were barred from bringing suit against their detentions in US civil courts because they were foreign nationals outside US sovereign territory.⁴²⁴ As a result, on 14 September 2004, the NSC ordered a temporary halt to the transfer of detainees from Afghanistan to GTMO; on 22 September, ten detainees were transferred before the hiatus.⁴²⁵

By October 2004, the BCP, now known as the Bagram Holding Area (BHA), reached capacity at 325 detainees and had no authority to transfer low-level detainees to

⁴²⁰ Ibid., pp. 6-7

⁴²¹ Ibid., p. 7

⁴²² Ibid., p. 8

⁴²³ Ibid., p. 9

⁴²⁴ Steven Welsh, 'Supreme Court Guantanamo Decision,' *Center for Defense Information*, 30 June 2004

⁴²⁵ Tim Golden and Eric Schmitt, 'A Growing Afghan Prison Rivals Bleak Guantánamo,' *NYT*, 26 February 2006

Afghan facilities or GTMO. Requests to transfer nine detainees in April had yet to be approved by the detainee assessment team at the pentagon.⁴²⁶

Rasul v. Bush was the impetus for increasing detainee releases in Afghanistan. Because GTMO was no longer open for transfers, US military commanders needed to alleviate the overcrowding at the BHA. By January 2005, the Afghan government had instigated a national reconciliation programme,⁴²⁷ and a HDC phase four enabler.

In May 2005, President Bush met with Afghan President Hamid Karzai at the White House to discuss improvements to the process of releasing non-combatants from US detention facilities.⁴²⁸ In August, the two governments signed a confidential diplomatic agreement to transfer detainees to Afghan custody in exchange for written assurances that the detainees would be treated humanely and held in a secure facility. The US agreed to build and fund the operation of a new prison as well as train and equip the Afghan prison guard force.⁴²⁹ The US's goal was to get out of detention operations in Afghanistan by turning over to the Afghan government 100 Afghan detainees at GTMO and 350 at the BHA⁴³⁰ and thus move from HDC phase four to phase five.

On 2 July 2005, the first 57 of 199 cleared detainees were released under the formalised *Takhim-e-Solh*⁴³¹ or strengthening peace plan, which was run by Mohammad Daud under the guidance of the Office of the Afghan National Security Council.⁴³² Under this HDC phase four plan, detainees would be released after they renounced

⁴²⁶ General David Barno, CG, CFC-A, Draft-October 2004, *Request for Delegation of Authority to Approve Release of Persons Under United States Control (PUC)*, attached to 19 October 2004 Memo from Secretary of the Army Pete Geren,

⁴²⁷ Golden and Schmitt

⁴²⁸ Tim Golden, 'Foiling U.S. Plan, Prison Expands in Afghanistan,' *NYT*, 7 January 2008

⁴²⁹ *Ibid.*

⁴³⁰ Gerry Gilmore, 'U.S. to Transfer Custody of Afghan Detainees,' *AFPS*, 4 August 2005

⁴³¹ The program was revamped and renamed the 'Afghan Peace and Reintegration Programme' in 2009 by the Government of Afghanistan. Major General David Hook, ISAF Force Reintegration Cell Director, Available at: <http://www.isaf.nato.int/article/focus/afghanistan-peace-and-reconciliation-program.html>, Accessed 18 July 2012

⁴³² Author Unknown, 'Battles Near Kandahar Kill 3 Enemies; Afghan Detainees Released,' *AFPS*, 2 July 2005

violence, pledged their allegiance to the new government, agreed not to take up arms against the government,⁴³³ and agreed to participate peacefully in Afghan society. Detainees were given medical exams, their personal belongings, and transferred to the Afghan government's programme office in Kabul. After they were registered into the programme, detainees were permitted to return home under the supervision of their tribal elders.⁴³⁴

By January 2006, more than 350 detainees had been released from the BHA. The average length of detention was 14.5 months. Continued combat operations and closure of the Kandahar STHF contributed to the steady rise in the number of detainees at the BHA; by February, it held some 500 prisoners.⁴³⁵ A new wing, a new medical facility, and flushing toilets were added to the BHA, but despite these improvements, the prison was bleak compared to GTMO.⁴³⁶ Conditions were so overcrowded that four detainees successfully escaped.⁴³⁷

Detainees' most common complaint at the BHA was that they had been wrongly imprisoned. Many claimed to have been turned in by their enemies or arrested by corrupt Afghan police for failing to pay extortion fees.⁴³⁸ Between the summers of 2002 and 2005, classified, intelligence driven, HDC phase four DRBs were held to review detainees' cases. Each detainee had an initial board within 90 days of capture and then a yearly review. The boards were made up of roughly ten people from the Criminal Investigative Task Force (CITF), MI, MP, and the JAG office. The DRB was chaired by the CJ-2 (the head MI officer), and met twice a week to review cases. MI analysts prepared the files for review focusing on whether the detainee should be placed on the 'release list,' the 'GTMO list' or the 'continued internment list' for intelligence

⁴³³ Author Unknown, 'Three Terrorists Captured; 26 Detainees Released,' *AFPS*, 7 December 2006

⁴³⁴ Author Unknown, 'Detainee Releases 'Strengthening Peace'; Afghan Air Control Centre Opens,' *AFPS*, 16 July 2005

⁴³⁵ Golden and Schmitt

⁴³⁶ Ibid.

⁴³⁷ Author Unknown, 'Final Missing SEAL Team Member Found; Four Bagram Detainees Missing,' *AFPS*, 11 July 2005

⁴³⁸ Ibid.

exploitation. To be sent to GTMO, a detainee had to be determined to be an EC. If a detainee were deemed not to be an EC, the DRB would contact the capturing unit to notify them that the detainee would be released unless they had any additional information that might keep him in custody.⁴³⁹

In June of 2005, the BHA's designation was changed to the Bagram Theatre Internment Facility (BTIF) as it expanded to a long-term holding facility.⁴⁴⁰ Afghan detainees were no longer sent to GTMO. Until early 2006, operations at the BCP/BHA/BTIF were closed to the international press and humanitarian community other than the ICRC. Many detainees had been in custody for two years without access to lawyers, any right to hear charges against them, and no knowledge of the contents of their personal dossier.⁴⁴¹

Construction began on the US\$20 million Afghan National Detention Facility (ANDF) at the old Pul-e-Charkhi Prison. Built by Mohammed Daoud Khan in the 1970s, the facility was used by the Soviets, Afghanistan's communist-backed government, and the Taliban. Like Saddam Hussein's Abu Ghraib Prison, the Pul-e-Charkhi had a 'bloody history'; thousands of political prisoners were tortured and executed there.⁴⁴² Originally, the ANDF was expected to house 628 prisoners, but due to a design flaw, that number was reduced to 330. The US had planned to transfer all prisoners from the BTIF to the ANDF, but it was not large enough.⁴⁴³ Block D of the prison was to be used to house Afghan detainees who would be transferred from GTMO. In May, the UN praised the ANDF as a model for detention reform in the country.⁴⁴⁴

⁴³⁹ Bovarnick, pp. 16-17

⁴⁴⁰ Ibid., p. 47

⁴⁴¹ Golden and Schmitt

⁴⁴² John Burns, 'Kabul Journal; Now on the Beaten Path: A Jail With a Bloody Past,' *NYT*, 2 December 1989

⁴⁴³ Golden

⁴⁴⁴ Author Unknown, 'UN plays key role in Afghan prison reform; Pul-i-Charkhi seen as model,' *UN*, 8 May 2006

Detainees were processed through the new Afghan judicial system, which could take more than nine months to determine whether a prisoner would stand trial, be sentenced to a prison term, or be released.⁴⁴⁵ Transfers from the BTIF to the ANDF began spring 2007. During that year, there was only one pre-trial release.⁴⁴⁶

From summer 2005 through summer 2007, the DRBs evolved to Enemy Combatant Review Boards (ECRBs).⁴⁴⁷ Composition of the board was reduced to five members: the Deputy G2, the MI Battalion Commander in charge of the BTIF, the MP Battalion Commander at the BTIF, the MP Brigade Deputy Commander, and a JAG officer. The boards continued to conduct an initial 90 day review and an annual review based on information presented by an MI analyst.⁴⁴⁸ Transfers to GTMO ceased. Results of ECRBs were: release, continued detention, or transfer to Afghan authorities for release or prosecution.⁴⁴⁹ The ECRBs did not inform detainees of the accusations against them, give them the opportunity to appear at their own defence, or allow an advocate to speak for them.⁴⁵⁰

As early as November 2005, discussions at OSD were underway to include the Afghan government in a collaborative detainee review process. Under ECRB guidelines, Afghan government participation was neither prohibited nor discouraged. With the goal of eventually turning detainees over to the Afghan government, the need to include Afghan government components in the detainee process became more conspicuous.⁴⁵¹

At the same time, the Afghan Independent Human Rights Commission (AIHRC), whose members were appointed by President Karzai, requested permission to

⁴⁴⁵ Candace Rondeaux, 'Afghan Detainees Sent Home to Face Closed-Door Trials,' *WP*, 13 April 2008

⁴⁴⁶ Thomas Joscelyn, 'WikiLeaks Doc: Catch and Release in Afghanistan,' *Weekly Standard*, 30 November 2010

⁴⁴⁷ Joscelyn, p. 18

⁴⁴⁸ *Ibid.*

⁴⁴⁹ *Ibid.*, p. 19

⁴⁵⁰ Golden and Schmitt

⁴⁵¹ Joseph Benkert, Principle Deputy Assistant Secretary of Defense for Global Security Affairs, *Action Memo: Government of Afghanistan Participation in the Enemy Combatant Review Board Process*, (Washington, DC: DOD, 4 September 2007)

meet with Afghan detainees under US control. Previously, access to detainees was restricted to law enforcement, intelligence personnel, and the ICRC. Both the Joint Staff and CENTCOM approved Acting Deputy Secretary of Defence Ryan Henry's policy memorandum on 14 December 2005.⁴⁵²

Several key events impacted detention operations in 2006 and 2007. On 5 October 2006, ISAF completed the final stage of expansion by assuming command of military operations from US forces in eastern Afghanistan. The UN Security Council created ISAF⁴⁵³ at the Bonn Conference to help stabilise Kabul after the fall of the Taliban in December 2001. Commanded by British Major General John McColl, ISAF worked with President Karzai to protect the city from the Taliban, Al-Qaeda, and factional warlords. Command of ISAF rotated every six months and was localised in Kabul for the first two years.⁴⁵⁴ In December 2003, ISAF assumed control of the northern, southern, and western regions of the country.⁴⁵⁵ On 11 August 2003, the UN gave the North Atlantic Treaty Organisation (NATO) control of ISAF command indefinitely.⁴⁵⁶

On 8 November 2006, President Bush announced the resignation of SECDEF Rumsfeld. Rumsfeld had become a political lightning rod and the focus of the ire of the judicial-Geneva camp's attacks; Bush appointed former CIA Director Robert Gates to replace him.⁴⁵⁷

On 4 February 2007, General McNeill, the former Commander of TF-180, returned to Afghanistan as the Commander of ISAF.⁴⁵⁸ His return was not without controversy; some said he should have been held accountable for the deaths and harsh

⁴⁵² Ryan Henry, *Action Memo: Request for Afghanistan Independent Human Rights Commission (AIHRC) Access*, (Washington DC: DOD, 12 December 2005)

⁴⁵³ *ISAF History*, Available at: www.isaf.nato.int/history.html, Accessed 23 October 2010

⁴⁵⁴ Richard Dannatt, *Leading from the Front*, (London, UK: Transworld Publishers, 2010), pp. 213-214

⁴⁵⁵ *ISAF History*

⁴⁵⁶ Alessandro Minuto Rizzo, NATO Speeches, 11 August 2003

⁴⁵⁷ Jim Rutenberg and Sheryl Gay Stolberg, 'Rumsfeld Resigns as Defense Secretary After Big Election Gains for Democrats,' *NYT*, 8 November 2006

⁴⁵⁸ General Dan McNeill, Biography, ISAF, Current as of 2 November 2010

treatment of detainees at the BCP in 2002.⁴⁵⁹ McNeill struggled to get along with his coalition force commanders and the Supreme Allied Commander, General John Craddock. In March 2007, Craddock issued an apology at Supreme Headquarters Allied Powers Europe in Brussels, after McNeill launched an offensive without informing NATO headquarters.⁴⁶⁰ He was replaced by General David McKiernan in June 2008.⁴⁶¹

Between February 2007 and September 2009, the next iteration of the detainee review boards, a HDC phase four mechanism, was labelled Unlawful Enemy Combatant Review Boards (UECRBs). The number of board members was reduced from five to three: the CJTF Provost Marshal, the BTIF Commander, and the head of interrogations. Beginning April 2008, detainees were not only informed their cases were up before the board, but they were allowed to appear without representation and make a statement. Detainees began to receive notification within two weeks of processing regarding the basis for their detention. The initial review was conducted within 75 days of detention and then reviewed every six months.⁴⁶²

MI analysts assisted the boards by recommending either continued detention for intelligence purposes or transfer to the Detainee Assessment Branch (DAB) who collaborated with Afghan authorities for further prosecution.⁴⁶³ The three board officers determined if detainees should be placed in one of three categories: High Level Enemy Combatant (HLEC), Low Level Enemy Combatant (LLEC), or threat only. Those recommended for release were labelled No Longer Enemy Combatant (NLEC). All LLEC files were transferred to the DAB and if enough evidence was available,

⁴⁵⁹ Margaret Carlson, 'The Wrong General,' *Huffington Post*, 13 August 2005

⁴⁶⁰ Author Unknown, 'NATO Irritated by new American ISAF Commander,' *Speigel*, 19 March 2007

⁴⁶¹ Author Unknown, 'McKiernan Assumes Command of NATO Forces in Afghanistan,' *AFPS*, 3 June 2008

⁴⁶² Bovarnick, p. 19

⁴⁶³ *Ibid.*

detainees were transferred to Afghan authorities for prosecution.⁴⁶⁴ The sign over the door of the DAB office in Bagram articulated their mission: ‘Turning Taliban into productive citizens of Afghanistan one detainee at a time’.⁴⁶⁵

Despite detainee releases, by January 2008, the number of prisoners at the BTIF had swelled to 630; the number at GTMO had dropped to 275.⁴⁶⁶ The issue of Afghans in detention was a continual problem for President Karzai and in April, he created the Aloko Detainee Commission to help facilitate prisoner releases. The commission expedited the release (without trial) of 104 detainees that year. The US military wanted some of these detainees to be tried for their crimes, but they were not and pre-trial releases continued through 2010. Many who were transferred to the ANDF with assurances of prosecution in Afghan courts were released shortly thereafter.⁴⁶⁷

In January 2009, the prisoner population at the BTIF had risen to 670; in GTMO it had fallen to 250.⁴⁶⁸ The US finally decided to build a larger, more adequate facility to replace the BTIF. Expected to cost at least US\$60 million, the new US Theatre Internment Facility in Afghanistan (USTIF-A)⁴⁶⁹ was designed to hold 600 detainees under normal circumstances, but have the capacity to hold an additional 500 if necessary. The site selected for the facility was a 40-acre plot at Bagram Air Force Base.⁴⁷⁰

In addition to replacing the BTIF, Acting Commander of CENTCOM Lieutenant General Martin Dempsey requested help from the DOD in June 2008 to rectify the deteriorating situation at the ANDF. SECDEF Gates instructed Deputy Assistant SECDEF for Central Asian Affairs Bobby Wilkes to request assistance from

⁴⁶⁴ Ibid.

⁴⁶⁵ John Garrity, ‘Real Stories from the BTIF,’ *MP*, Spring 2010, p. 7

⁴⁶⁶ Golden

⁴⁶⁷ Thomas Joscelyn, ‘WikiLeaks Doc: Catch and Release in Afghanistan,’ *Weekly Standard*, 30 November 2010

⁴⁶⁸ Mark Thompson, ‘Another Gitmo Grows in Afghanistan,’ *Time*, 5 January 2009

⁴⁶⁹ Garrity, pg. 7

⁴⁷⁰ Thompson

the State Department to ‘support the reconstruction and refurbishment of the maximum-security section and blocks one and two of the prison’.⁴⁷¹

After President Obama was elected in November 2008, he received daily intelligence briefings. On 9 December, CIA Director Michael Hayden and Director of National Intelligence Mike McConnell briefed Obama and his team in Chicago on the CIA’s rendition, interrogation, and detention programme.⁴⁷² The Agency had closed its detention facilities and transferred all prisoners to GTMO in May 2006.⁴⁷³ Hayden explained the merits of sleep deprivation on hard-core detainees and detailed techniques used to keep detainees awake; Obama ‘seemed transfixed’.⁴⁷⁴

In his inaugural address 20 January 2009, President Obama repudiated the previous administration’s policies (the intelligence-collection school-of-thought) and laid out his vision (the judicial-Geneva Conventions school-of-thought) to reclaim America’s morale high-ground.⁴⁷⁵ During the campaign, he criticised President Bush’s neglect of the war in Afghanistan and vowed to draw down troops in Iraq and move more to Afghanistan.⁴⁷⁶ He also promised to shut down the prison at GTMO and end the interrogation and detention policies of the Bush Administration.⁴⁷⁷ On his second day in office, Obama signed three executive orders that embodied his new policy: Executive Order 13491 - Ensuring Lawful Interrogation, Executive Order 13492 - Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Close of Detention Facilities, and Executive Order 13493 - Review of Detention Policy Options. (See Guantanamo chapter for discussion on these orders).

⁴⁷¹ Robert Gates, Secretary of Defense, *Letter to General Martin Dempsey Regarding Pol-e-Charki Prison*, (Washington, DC: DOD, 5 June 2008)

⁴⁷² Bob Woodward, *Obama’s Wars*, (NYC: Simon & Schuster, 2010), pp. 50-53

⁴⁷³ Adam Goldman, ‘Inside Romania’s secret CIA prison,’ *AP*, 9 December 2011

⁴⁷⁴ Woodward, pp. 54-55

⁴⁷⁵ David Sanger, ‘Rejecting Bush Era, Reclaiming Values,’ *NYT*, 20 January 2009

⁴⁷⁶ Jim Lehrer and Gwen Ifill, ‘Obama Calls for U.S. Military to Renew Focus on Afghanistan,’ *PBS*, 15 July 2008

⁴⁷⁷ Siobhan Gorman, ‘Intelligence Policy to Stay Largely Intact,’ *WSJ*, 11 November 2008

In February 2009, President Obama rejected demands from human rights groups to extend the same *habeas corpus* rights granted to GTMO detainees to those in custody at the BTIF in Afghanistan. Acting Assistant Attorney General Michael Hertz stood by the Bush Administration's policy that federal courts had no jurisdiction over cases filed by prisoners held in the course of military operations outside the US.⁴⁷⁸

In April, Judge John Bates of the US District Court for the District of Columbia stated that *habeas* did extend to some detainees in Afghanistan. Bates ruled in the case of three detainees at the BTIF that *Boumediene v. Bush*, the right to challenge their detention in US court, did apply because the prisoners were captured outside of Afghanistan and brought to the BTIF for detention. Bates found that 'the factors the Supreme Court set out in *Boumediene* to determine when prisoners have *habeas* rights could lead to different outcomes for different prisoners',⁴⁷⁹ especially for Afghan prisoners at the BTIF. The ruling, which affected only about 30 of the 600 prisoners, granted the right of federal court review to all non-Afghan detainees captured outside the war zone held more than six years.⁴⁸⁰

On 9 March, US Forces Afghanistan (USFOR-A)/ISAF Commander General David McKiernan said the Taliban had achieved a stalemate in southern and eastern Afghanistan and asked for more troops; President Obama admitted the US was not winning.⁴⁸¹ In May, SECDEF Gates decided to replace McKiernan with former Joint Special Operations Command (JSOC) Commander General Stanley McChrystal,⁴⁸² who honed and perfected the find-fix-finish targeting strategy⁴⁸³ for HVT kill-capture

⁴⁷⁸ Charlie Savage, 'Obama Upholds Detainee Policy in Afghanistan,' *NYT*, 21 February 2009

⁴⁷⁹ Daphne Eviatar, 'Judge Rules Bagram Detainees Can Appeal to U.S. Courts,' *Washington Independent*, 3 March 2009

⁴⁸⁰ Author Unknown, 'The Next Guantanamo,' *NYT*, 12 April 2009

⁴⁸¹ Ben Farmer, 'General David McKiernan: Taliban have achieved stalemate in Afghanistan,' *The Telegraph*, 9 March 2009

⁴⁸² Author Unknown, 'New Afghanistan Commander Brings Skill, Controversy to Tough Mission,' *VOA*, 10 June 2009

⁴⁸³ Rosenbach, Eric and Perits, Aki, 'New Find-Fix-Finish Doctrine,' *JFQ*, Issue 61, 2nd Quarter 2011, (St. Louis, MO: NDU Press: April 2011), p. 98

missions in Iraq.⁴⁸⁴ Gates, who requested the resignation of McKiernan, said it was time for a new strategy and believed McChrystal, the former Director of the Joint Staff, would provide it.⁴⁸⁵

On 24 March, the new strategy was given a new name; speechwriters and staff at the Pentagon were notified the phrases ‘Global War on Terror’ or ‘Long War’ would henceforth be replaced by the term ‘Overseas Contingency Operation’ (OCO). Some in the Bush Administration had been averse to the phrase ‘Global War on Terrorism’, in fact, SECDEF Rumsfeld had employed the phrase ‘Global Struggle Against Violent Extremism’ (GSAVE), but President Bush had dismissed it.⁴⁸⁶ In hindsight, Rumsfeld felt that the administration should have focussed more on the ideology of radical Islam to describe the enemy.⁴⁸⁷ By September 2009, OCO was fully ingrained in the Obama Administration’s lexicon and was used in the title of the next Senate appropriations bill funding the wars.⁴⁸⁸

At his confirmation hearings in June, General McChrystal said that when he took command of JSOC detention facilities in Iraq and Afghanistan in 2003, the forces involved were inexperienced and the facilities, disorganised.⁴⁸⁹ During questioning, McChrystal said he was ‘uncomfortable’ with some of the harsh techniques officially approved for interrogations including stress positions, sleep deprivation, and the use of dogs. He also affirmed that after investigation, ‘all substantiated cases of abuse resulted in disciplinary action’, and he committed to ‘strictly enforce’ the laws of war for battlefield detainees, introduce improvements to detention operations,⁴⁹⁰ and use only

⁴⁸⁴ Grey and Edge

⁴⁸⁵ Michael Carden, ‘Gates Recommends McChrystal for Top Command in Afghanistan,’ *AFPS*, 11 May 2009

⁴⁸⁶ Al Kamen, ‘The End of the Global War on Terror,’ *WP*, 24 March 2009

⁴⁸⁷ Rumsfeld, *Known and Unknown*, p. 360

⁴⁸⁸ Press Release, US Senate Committee on Appropriations, *FY 2010 Overseas Contingency Operations*, 9 September 2009

⁴⁸⁹ Thom Shanker and Eric Schmitt, ‘Nominee for Afghan Post Stresses Civilian Safety,’ *NYT*, 2 June 2009

⁴⁹⁰ *Ibid.*

interrogation techniques found in *FM 2-22.3*.⁴⁹¹ McChrystal was confirmed 10 June 2009.⁴⁹²

In February 2008, US Ambassador Christopher Dell, Afghanistan Deputy Chief of Mission, visited Sheik Ahmed, the leader of the 'Awakening movement' in Iraq, to see if any applicable lessons could be applied in Afghanistan. Sheik Ahmed's deceased brother and founder of the movement, Sheik Abdul-Sattar, said previously '[I will] help support the local [Iraqi] police and I'll help you [US] fight all the way to Afghanistan.' Sheik Ahmed's right hand man, Asadaalla Faraj, a former Iraqi Intelligence General, was previously stationed in Islamabad working with the Taliban until 2002. He prepared a study of lessons learned and how to fight the Taliban and Al-Qaeda and gave it to the US.⁴⁹³

In early June 2008, when violence in Afghanistan hit the highest levels since the 2001 invasion, CENTCOM Commander General David Petraeus asserted that COIN-CT (Appendix E) lessons learned in Iraq should be applied in Afghanistan. These included: having troops live among the population they protect, creating a comprehensive interagency approach, pursuing the enemy tirelessly and holding cleared areas, separating extremist detainees or 'irreconcilables' from 'reconcilables' and promoting reconciliation, and taking the initiative in communicating and disseminating truth.⁴⁹⁴ (Appendix F)

On 26 June 2009, Gates instructed Petraeus to conduct a thorough review of the war in Afghanistan. On 2 July, McChrystal presented his three main assessment questions to his team: Can ISAF accomplish its mission? How should ISAF go about

⁴⁹¹ Spencer Ackerman, 'McChrystal on Detainee Abuses Under His Former Command,' *Washington Independent*, 2 June 2009

⁴⁹² Spencer Ackerman, 'McChrystal Confirmed,' *Washington Independent*, 10 June 2009

⁴⁹³ Sterling Jensen, Author Interview, Ashburn, VA, 28 March 2009

⁴⁹⁴ John Kruzal, 'Iraq Counterinsurgency Lessons Apply to Afghanistan, Petraeus Says,' *AFPS*, 11 June 2009

it? And what is required for success?⁴⁹⁵ As a part of the review, Petraeus asked retired Marine Major General Douglas Stone, the former head of detention operations in Iraq, to lead a six-week comprehensive review of detention operations.⁴⁹⁶ Retired US Army Colonel Anthony Lieto, a former detention officer who served with Stone in Iraq, was assigned to the team. Lieto met with two former high-ranking Taliban officials in Kabul who had been held at GTMO and the BTIF, Abdul-Salam Zaeef, who was the former Taliban Ambassador to Pakistan, and Wakil Ahmed Muttawakil, the Taliban's former foreign minister. Lieto informed them of a shift in US policy; within 12 to 18 months the US planned to turn over all detention operations to the Afghan security forces and the Ministry of Justice.⁴⁹⁷

Stone completed his review of detainee operations and presented a 700-page classified report to McChrystal and Petraeus. The report professed that as many as 400 of the 600-plus detainees in US custody should be released. It also recommended that US and Afghan authorities focus on rehabilitation rather than the warehousing of detainees. It suggested many of the strategies Stone had employed successfully in Iraq including the separation of Islamic militants from the general prison population and the education of the moderate detainees, the 'accidental guerrillas', to help them reintegrate back into their communities upon release.⁴⁹⁸ The report articulated the goal of equipping detainees with the skills that would prevent them from returning to the insurgency.⁴⁹⁹

A key component of Stone's reform was to not only improve the procedural process of detention, but also the structural facilities at the BTIF. The report emphasised the need for a new prison in order to implement the new strategy. The

⁴⁹⁵ Stanley McChrystal, General, Commander, US Forces Afghanistan (USFA) and International Security and Assistance Forces (ISAF) Afghanistan, *COMISAF's Initial Assessment*, (Kabul, AF: HQ, USFA/ISAF, 30 August 2009), p. 1

⁴⁹⁶ Tom Bowman, 'General Advises Releasing Afghan Detainees,' *NPR*, 19 August 2009

⁴⁹⁷ Andrew Wander, 'Afghanistan prepares for Bagram 2.0,' *Al-Jazeera*, 14 August 2010

⁴⁹⁸ David Morgan, 'U.S. report urges changes in Afghan detainee policy,' *Reuters*, 20 July 2009

⁴⁹⁹ Bowman, 'General Advises Releasing Afghan Detainees'

report insisted that the remodelled Afghan-guarded ANDF at the old Pul-e-Charkhi prison was a safe haven for Taliban and Al-Qaeda leaders, who ran the interior of the facility unchecked, indoctrinating and radicalising the prisoner population.⁵⁰⁰

On 30 August 2009, McChrystal presented his final assessment to Petraeus and Gates and recommended the immediate implementation of a counterinsurgency (COIN) strategy. McChrystal addressed the need for ISAF, a conventional force, to transform immediately into a non-conventional force and begin interacting with the local populace with the goal of making the Afghan public the centre of gravity (COG) in the effort.⁵⁰¹ The report contained an annex of changes to be made in detention operations. It asserted US detention operations in Afghanistan lacked transparency, prevented due process, and the facilities themselves were dangerously overcrowded. These problems prevented coalition forces from winning over the hearts and minds of the local population; detention operations had become a strategic albatross.⁵⁰²

The assessment team advocated the creation of a Combined (international) Joint (interservice) Interagency (cross governmental) Task Force (CJIATF) to prepare the Afghan government to assume responsibility for all detention operations as soon as possible.⁵⁰³ Their report said:

To reduce the strategic vulnerability that detention operations can create, success requires increasing confidence of Afghan citizens and the international community that the US and the Afghan government detainee operations are humane, legal, legitimate, and necessary to defeat the insurgency. Transitioning detention operations to the Afghan government and assisting the government to strengthen their judicial system are steps required to ensure Afghan sovereignty.⁵⁰⁴

⁵⁰⁰ McChrystal, p. F-1

⁵⁰¹ Ibid., pp. 1-1 – 1-3

⁵⁰² Ibid., p. F-1

⁵⁰³ Ibid., p. F-3

⁵⁰⁴ *Report on Progress Towards Security and Stability in Afghanistan*, November 2010, Report to Congress in Accordance with Public Law 110-181

Specifically, the team recommended the CJIATF be commanded by a general officer with an ambassador as civilian deputy, and at least 120 personnel (70 civilian and 50 military), to report directly to USFOR-A with its own headquarters and six lines of operations.⁵⁰⁵

The report named the first line the Operations Brigade, which would provide safe, secure, legal, and humane custody and control of all detainees. The second was the Intelligence Group, whose mission would be the coordination of intelligence collection and analysis with input from the Joint Interrogation and Debriefing Centre (JIDC), the Strategic Debriefing Centre, and the field detention sites. The third line was the Detention and Prisons Common Program Support Group whose task would focus on establishing programmes designed to move detention and correction operations away from retribution to rehabilitation, de-radicalization, and successful re-integration of prisoners into their home populations.⁵⁰⁶ The Engagement and Outreach Group was the fourth line, to focus on creating and implementing a strategic communications message to disseminate information about US detention and interrogation practices. The fifth line was the Legal Group to work alongside the Afghan government and the international community to identify the gaps in the rule of law that inhibit detention and corrections operations and devise solutions. Finally, the sixth line was the Afghanistan Prison Engagement Group who would assist the Afghan government in reforming their Central Prisons Directorate in order to defeat the growing insurgency within the walls of their prisons.⁵⁰⁷

Key to McChrystal's strategy was teaching COIN doctrine to military personnel and using cultural advisors and linguists to assist in winning the support of the population. Soldiers who could communicate and build bridges of understanding with the Afghan people became invaluable to the mission. Army Major Cory Schulz led a

⁵⁰⁵ McChrystal, p. F-3

⁵⁰⁶ Ibid., p. F-3

⁵⁰⁷ Ibid., p. F-4

tactical team embedded with Afghan troops in Paktika Province; he said his interpreter was more important than his weapon because with his gun he could only defend himself, but with an interpreter he could command hundreds of Afghan soldiers.⁵⁰⁸

Torin Nelson, a former Army interrogator and contractor in Afghanistan, stressed the critical need for more Pashto linguists, tribal experts, and individuals who understood the history of the conflicts in the region over the last 30 years. (Appendix G) Above all, Nelson said it was imperative to develop the ability to build rapport with the detainees. This skill and the aptitude to operationalize culture as a tool was vital to the interrogators who sifted through the hundreds of Afghans processed through the BTIF.⁵⁰⁹ By late October 2010, more than 20,000 coalition personnel (70% Afghan forces) had completed COIN training at Camp Julien in Kabul. The skills taught would be key as Afghans prepared to take over military operations from ISAF.⁵¹⁰

During July 2009, President Obama's newly appointed Deputy Assistant Secretary of Defence (DASD) for Detainee Affairs, Phil Carter,⁵¹¹ published updated guidance reflecting the administration's shift in attitude towards detainees from an intelligence-collection focus to a judicial-Geneva Conventions focus. First, verbiage in the memo referred to detainees as 'aliens detained by the Department of Defence at the BTIF' and 'unprivileged enemy belligerents'.⁵¹² The memorandum delineated that only individuals suspected of aiding in the 9/11 attacks, supporting the Taliban, or abetting Al-Qaeda and associated forces could be detained in the OCO. It admonished against detaining individuals for their intelligence information alone and instructed capturing units to make a determination within 72 hours as to whether the detainee met the criteria and should be transferred to the BTIF. The commander was directed to review each

⁵⁰⁸ Joshua Foust, 'Maladies of Interpreters,' *NYT*, 21 September 2009

⁵⁰⁹ Torin Nelson, Author Interview, SLC, UT, 3 March 2009

⁵¹⁰ Ian Graham, 'Training Brings Counterinsurgency Strategy to Afghans,' *AFPS*, 27 October 2010

⁵¹¹ Robert Gates, *News Release on Senior Executive Service Appointments/Assignments* (Washington, DC: DOD, 6 May 2009)

⁵¹² Phil Carter, Deputy Assistant Secretary of Defense for Detainee Affairs, Letter to the Honourable Senator Carl Levin, *Detainee Review Procedures at Bagram Theatre Internment Facility (BTIF), Afghanistan*, (Washington, DC: DOD, 14 July 2009)

detainee within 14 days and inform them orally and in writing (in their own language) why they had been detained. Upon arrival, detainees were to be sent to a DRB, accompanied by a personal representative (PR) to act on their behalf.⁵¹³

Deputy SECDEF William Lynn signed an order in July⁵¹⁴ and on 15 September 2009 Petraeus announced the implementation of the policy granting detainees a US military representative to challenge their detentions in front of the DRB.⁵¹⁵ PRs were non-lawyer, commissioned officers trained in the DRB process, who were provided all information (including classified information) on detainees in order to act in their best interest and help facilitate their release. PRs signed confidentiality agreements with elements of the attorney-client privilege.⁵¹⁶ The new DRBs resembled those successfully implemented in Iraq that allowed detainees to challenge their detention within 60 days of incarceration and again after six months in custody.⁵¹⁷

Lal Gul, the chief of the Afghan Commission for Human Rights (ACHR), praised the policy.⁵¹⁸ The ICRC also commended the Pentagon's plan to give regular review to the prisoners.⁵¹⁹ Pushing for more transparency, the American Civil Liberties Union (ACLU) filed suit to have the names of all BTIF detainees released as they had been at GTMO.⁵²⁰ On 17 January 2010, the names of 645 detainees were released⁵²¹ but on 25 October, the US District Court for the Southern District of New York denied the ACLU's request for additional information. The court stated the CIA and the US military did not have to release 'other vital information including the detainees'

⁵¹³ Ibid.

⁵¹⁴ Pauline Jelinek, 'US starting new system for Afghan detainees to challenge their detention,' *South Florida Sun-Sentinel*, 13 September 2009

⁵¹⁵ General David Petraeus, Commander, USCENTCOM, *INFO MEMO: Implementation of Deputy Secretary of Defense Policy Guidance on Detainee Review Procedures at Bagram Theatre Internment Facility (BTIF), Afghanistan*, 18 September 2009, Declassified and released by DOJ, Accessed 10 November 2010

⁵¹⁶ Bovarnick, p. 30

⁵¹⁷ Gerry Gilmore, 'Bagram Detention Facility to Implement Case Review Panels,' *AFPS*, 14 September 2009

⁵¹⁸ Sayed Salahuddin, 'Afghan body hails planned US change on detainees,' *Reuters*, 13 September 2009

⁵¹⁹ Stephanie Nebehay, 'ICRC welcomes Pentagon plan to review Afghan detainees,' *Reuters*, 15 September 2009

⁵²⁰ Author Unknown, 'ACLU seeks Bagram Air Base detainee records,' *AP*, 22 September 2009

⁵²¹ Alissa Rubin and Sangar Rahimi, 'Bagram Detainees Named by U.S.,' *NYT*, 17 January 2010

nationalities, how long they have been held, in what country they were detained and the circumstances surrounding their capture'.⁵²²

The most significant HDC phase three event occurred on 18 September 2009, when SECDEF Gates established JTF-435 to oversee detention operations in Afghanistan.⁵²³ The numbers 4-3-5 represented the place of the letters D (detention), C (corrections), and E (exploitation) in the alphabet and stood for the activities the JTF would be involved in.⁵²⁴ At this point, the BTIF held 639 detainees; by December there were 753.⁵²⁵ In September, USAF Colonel Paul Eberhart, the Director of the Joint Deployable Team of the Joint Enabling Capabilities Command (JECC), Joint Forces Command, was assigned to assist with the creation of the new TF.⁵²⁶ The mission of the JECC was to deploy a 'McKinsey-esque',⁵²⁷ DOD internal consulting team to quickly establish a JTF.⁵²⁸ Doctrinally, there was no template or precedent for creating a detention CJIATF in accordance with the McChrystal plan. The JECC had to figure it out along the way.⁵²⁹ Eberhart spent three weeks in Norfolk, Virginia conducting mission analysis with his team and seven months working directly with the new TF to ensure the best practices of JTF formation and management were implemented by the new TF.⁵³⁰

JTF-435 was initially authorised a compliment of 58 headquarter personnel bridged by the JECC's own 28 personnel until the military could find individual augmentees to fill the billets. They had a 120-day deadline to fill all the positions on

⁵²² Author Unknown, 'Court lets US keep details on Bagram inmates secret,' *The Dawn*, 26 October 2010

⁵²³ William O'Brien, 'Khost Governor Hosts Release Shura for 12 Former Detainees,' *Blackanthem Military News*, 26 July 2010

⁵²⁴ Military #29, Author Interview, Kabul, Afghanistan, 21 July 2012

⁵²⁵ Bovarnick, p. 28

⁵²⁶ Colonel Paul Eberhart, Director, Joint Deployable Team, Joint Enabling Capabilities Command, Joint Warfighter Professional Development Seminar, 'JTF 435 Stand Up: Lessons Learned JTF Forming,' 14 July 2010, Joint Forces Command, Norfolk, Virginia, slide 1

⁵²⁷ Author Unknown, 'Your Post Merger Checklist,' *Adam Smith Esq.*, 11 October 2010

⁵²⁸ Eberhart, slide 5

⁵²⁹ Ibid., slide 14

⁵³⁰ Ibid., slide 1

the joint manning document.⁵³¹ The first member of JTF-435 was Brigadier General Mark Martins, who acted as interim commander from September through November 2009.⁵³² On 15 November Martins gave press tours of the new USTIF-A, also known as the Detention Facility in Parwan (DFIP).⁵³³ It was furnished with classrooms, vocational-technical training areas, and fully equipped medical facilities. Martins, a West Point, Oxford, and Harvard-trained lawyer, was President Obama's former classmate and had worked on Obama's TF on detention operations and strategy.⁵³⁴ He had been the driving force behind the establishment of the new JTF⁵³⁵ in order to help establish a clear legal basis to hold detainees and turn them over to the Afghan government as soon as possible.⁵³⁶

The JTF command believed that in a COIN campaign, it was more costly to detain prisoners in-theatre than to send them to a strategic facility outside the country because of the challenges of dealing with the demands of the host government as well as the local population. The local media's coverage of the kill-capture programme directly affected the US forces' ability to win the hearts and minds of the Afghan people.⁵³⁷ While this may be true the price paid by the US government for the GTMO detention facility in global good will would need to be weighed against the price of keeping the facility in country. Arguably, keeping them in country is the lesser of two evils.

SECDEF Gates selected Vice Admiral (SEAL) Robert Harward to lead the new JTF-435; he arrived in Afghanistan in November 2009.⁵³⁸ A SOF operator, Harward understood the importance of COIN and the key role cultural tradecraft played in COIN.

⁵³¹ Ibid., slide 5-6

⁵³² Bovarnick, p. 25

⁵³³ Alissa Rubin, 'U.S. Readies New Facility for Afghan Detainees,' *NYT*, 16 November 2009

⁵³⁴ Carol Rosenberg, 'Gitmo Trials to get Limited Broadcast to US,' *Miami Herald*, 27 September 2011

⁵³⁵ Phil Carter, Author Interview, Rosslyn, VA, 31 October 2011

⁵³⁶ Joshua Partlow, 'Military calls complex an improvement for detainees' conditions,' *WP*, 16 November 2009

⁵³⁷ Michael Gottlieb, 'Discussion of Theater Detention Operations,' *Duke Law School*, 14 April 2011

⁵³⁸ Spencer Ackerman, 'McChrystal's Chief Detentions Officer: All Detainees Under My Command Have Red Cross Access,' *Washington Independent*, 27 January 2010

Harward, raised in Iran, travelled throughout Afghanistan as a teen; his background helped him establish relationships of trust with his Afghan government.⁵³⁹ Admiral Harward also worked effectively with the DASD for Detainee Affairs office to stand-up the new TF and to inform Congress of the changes in strategy.⁵⁴⁰

TF leaders realised they needed more personnel and spent two weeks working a plan to increase slots on the joint manning document to 150.⁵⁴¹ Convincing other organisations to provide individual augmentees was challenging; every command had its own mission and none wanted to lend personnel. CJCS Admiral Michael Mullen came through Afghanistan and asked Admiral Harward what his biggest obstacle was. Harward replied, 'The fact that I have yet to receive my first individual augmentee that was promised to have been here two weeks ago'. The CJCS resolved the issue and the TF 'saw a big change in priorities for forces flowing into theatre'.⁵⁴² Harward instructed TF leaders that everything they did to build the organisation was to have an 'Afghan flavour' including tapping an Afghan as one of the Deputy TF Commanders. In the end, the goal was to turn the mission over to the Afghans. 'Otherwise,' Harward said, 'we're going to do this forever'.⁵⁴³

Harward's other focus was injecting transparency into the public perception of the new detention TF after years of intense media scrutiny on detainee issues. His staff worked to develop an open-door policy with the public and the media. Coordination with CENTCOM and the Pentagon sometimes proved challenging. While CENTCOM was in CJIATF-435's direct chain of command via USFOR-A/ISAF, it was often quicker and easier to coordinate directly with the Pakistan-Afghanistan Coordination

⁵³⁹ Admiral Robert Harward, USN, Commander TF 435, Official Navy BIO, Current as of 4 July 2010

⁵⁴⁰ Carter Interview.

⁵⁴¹ Eberhart, slide 10

⁵⁴² Ibid., slide 7

⁵⁴³ Ibid., slide 9

Cell. This cooperation with the Pentagon was essential in order to quickly declassify detainee information.⁵⁴⁴

On 19 November 2009, President Karzai was re-elected.⁵⁴⁵ In his inaugural address he said:

The detention and prosecution of suspects is the authority and responsibility of the Afghan government. We have to strengthen the security of our prisons and detention centres, and expedite further the reform process within our justice system. We will continue to discuss this issue with the United States of America to ensure that detention and legal prosecution of suspects will be the responsibility of the government of Afghanistan alone.⁵⁴⁶

On 1 December, President Obama revealed his new surge strategy to cadets at West Point. Just as President Bush had done in Iraq in 2007, Obama decided to 'surge' an additional 30,000 troops to Afghanistan to fulfil his campaign promise to escalate the 'right' war⁵⁴⁷ which he considered the only legal war the Bush administration had engaged in. He nearly doubled the 42,000 soldiers already in country, but pledged to reduce troop levels by June 2011. Obama reiterated his belief that the region was the epicentre or centre-of-gravity for radical Islam and Al-Qaeda power and restated his conviction that US national interests were at stake because of Pakistan's nuclear capabilities. Obama outlined his 18-month plan to pursue a military strategy to break the Taliban's momentum while increasing Afghanistan's capacity to self-govern. He vowed to work with NATO, the UN, and the Afghan people to pursue a more effective civilian strategy in order to improve security. Obama also promised to act with the full recognition that success in Afghanistan was inextricably linked to a partnership with Pakistan.⁵⁴⁸ Military advisors welcomed the strategy, but by including a withdrawal

⁵⁴⁴ Ibid., slide 8 and 10

⁵⁴⁵ Joshua Partlow, 'Karzai sets key goals in inaugural address: Afghan leader's focus on security, corruption matches U.S. aims,' *WP*, 20 November 2009

⁵⁴⁶ Hamid Karzai, President of Afghanistan, Inaugural Acceptance Speech, 19 November 2009, Kabul, Afghanistan, p. 4

⁵⁴⁷ Foon Rhee, 'Obama: Afghanistan, not Iraq, should be focus,' *Boston Globe*, 15 July 2008

⁵⁴⁸ Barack Obama, 'Full Text of Policy Speech on Afghanistan,' *ABC*, 1 December 2009

timeline in order to appease his political base, they feared the president alerted the Taliban to simply wait out the surge.⁵⁴⁹

By early December 2009, JTF-435 was fully staffed, operating like a CJIATF,⁵⁵⁰ and ready to support Obama's surge.⁵⁵¹ With the completion of the DFIP and the creation of JTF-435, JTF Protector (the TF formed around the 16th MP Brigade to manage the custody, control, and care of detainees at the BTIF) finished its mission 21 December;⁵⁵² all 753 detainees were transferred to the new DFIP.⁵⁵³

Shortly after the closure of the BTIF, the DOD made plans to demolish the facility. Lawyers for several detainees threatened to sue the US government over the destruction of evidence. In order to avoid litigation, the US government assigned the FBI to conduct an operational site survey and create a digital interactive virtual archive of the entire facility. The FBI also agreed to preserve and protect any images, blue prints, and other records that showed the interior of the BTIF under DOD possession.⁵⁵⁴ To collect the evidence, the FBI sent an Evidence Response Team from the FBI's Laboratory Division.⁵⁵⁵

On 22 December 2009, CJ-2 Major General Flynn released an unclassified power point presentation on the state of the insurgency, criticising the 'failure of his own service, US military intelligence, in Afghanistan over the last eight years'. Flynn warned the insurgency was growing at a rapid rate and was capable of sustaining itself indefinitely. He stated the Taliban understands COIN and advised the development of a new, clear, properly funded strategy to be implemented immediately.⁵⁵⁶

⁵⁴⁹ Charles Krauthammer, 'Obama's surge speech offers two messages: one to placate the right, one to assuage the left,' *NY Daily News*, 3 December 2009

⁵⁵⁰ Eberhart, slide 14

⁵⁵¹ Fred Hiatt, 'In Afghan troop surge, shades of Iraq,' *WP*, 7 December 2009

⁵⁵² Garrity, pp. 6-7

⁵⁵³ Bovarnick, p. 28

⁵⁵⁴ *Stipulation Regarding Bagram Theatre Internment Facility*, Guantanamo Bay Detainee Litigation, United States District Court for the District of Columbia, 24 March 2010, pp. 4-5

⁵⁵⁵ Josh Gerstein, 'FBI making virtual reality copy of Bagram prison,' *Politico*, 24 March 2010

⁵⁵⁶ General Michael Flynn, Director of Intelligence, ISAF and US Forces, 'Afghanistan, *State of the Insurgency-Trends, Intentions and Objectives*,' 22 December 2009

On 7 January 2010, a mission rehearsal exercise battle drill scenario brought the JTF to initial operations capability allowing the task force to conduct command and control of subordinate units and operate as a headquarters.⁵⁵⁷ Harward officially assumed command on 8 January⁵⁵⁸ and served with a DOD civilian deputy, Michael Gottlieb.⁵⁵⁹ His first major act on 9 January⁵⁶⁰ was to sign an agreement with the government of Afghanistan pledging to turn over the DFIP to the Ministry of Justice by January 2011.⁵⁶¹ The plan was for the Afghan Ministry of Defence to assume control of the facility initially, and help transition it to the Ministry of Justice over the year.⁵⁶² The DFIP was to become part of the Afghan Justice Centre in Parwan, the Afghan government's central facility for pre-trial detention, prosecution, and post-trial incarceration of all national security suspects.⁵⁶³ The Taliban condemned the 9 January announcement, claiming detainees would be treated worse if turned over to the Afghan government.⁵⁶⁴

One of the first studies conducted by JTF-435 was a survey of detainees who had been released. In January 2010, former detainees met in Kabul at a post release ceremony, or *shura*, to discuss the re-integration process. They said they had positive and frequent contact with local tribal leaders, but sporadic communications with the national government. Overall, the re-integration process was successful; the rate of recidivism was just 1.2%. Unemployment was the chief concern for the re-integrated detainees.⁵⁶⁵

⁵⁵⁷ Author Unknown, 'New task force assumes control of detainee operations in Afghanistan,' *CENTCOM*, 8 January 2010

⁵⁵⁸ Christen McCluney, 'Detainee Operations in Afghanistan Focus on Law, Dignity,' *AFPS*, 27 January 2010

⁵⁵⁹ Michael Gottlieb, 'Discussion of Theater Detention Operations,' *Duke Law School*, 14 April 2011

⁵⁶⁰ Author Unknown, 'Media Shoots Imagery at Afghan Detention Facility,' *AFPS*, 30 August 2010

⁵⁶¹ McCluney

⁵⁶² Ibid

⁵⁶³ Author Unknown, 'Media Shoots Imagery at Afghan Detention Facility'

⁵⁶⁴ Author Unknown, 'Taliban Condemn U.S. Bagram Prison Handover,' *NYT*, 13 January 2010

⁵⁶⁵ *Report on Progress Towards Security and Stability in Afghanistan*, November 2010, Report to Congress in accordance with Public Law 110-181, p. 61

In a 27 January 2010 conference call with reporters, Harward was asked about secret ‘black’ detention sites in Afghanistan where unregistered detainees were kept away from the ICRC. He affirmed that all detainees under his control were registered and declared to the ICRC, but noted that temporary field detention sites (FDS) existed at forward operating bases (FOBs) where detainees were collected from point-of-capture before transport and processing into the detention system.⁵⁶⁶

To assist with the evolving HDC phase four DRB process, additional personnel were assigned to the TF in order to more efficiently process detainees efficiently through the system. Prior to JTF-435 assuming responsibility for the DRB process from CJTF-82 (The TF that ran the BTIF),⁵⁶⁷ DRBs were held just once a week. In January 2010, JTF-435 began holding three DRBs per week, and by 15 March, they had the capacity to operate two DRBs simultaneously, each reviewing five detainees a day, five days a week for a total of 50 cases a week. By June, the DRBs had released 160 detainees and transferred another 168.⁵⁶⁸

On 21 October 2009, AIHRC Chairman Lal Gul requested from USFOR-A access to detainees at the DFIP and to observe the DRBs. On 5 November, USFOR-A approved the request conditionally, and on 18 November CENTCOM approved the recommendation. On 15 January 2010, Principle Director for Detainee Affairs Alan Liotta asked the USD(P) to approve the request, which he did on 19 January.⁵⁶⁹ Deputy SECDEF Lynn concurred on 19 February.⁵⁷⁰

Harward approved a DRB policy memorandum that codified rules for DRBs. Released in March 2010, it filled in gaps left by the July 2009 SECDEF DRB Procedures. Most critically, it declared inadmissible any information collected through

⁵⁶⁶ Ackerman

⁵⁶⁷ Bovarnick, p. 27

⁵⁶⁸ Ibid, p. 28

⁵⁶⁹ Alan Liotta, Principle Director for Detainee Policy, *Action Memo: Afghanistan Independent Human Rights Commission Access to the United States Theater Internment Facility Afghanistan (A-TIF)*, (Washington DC: DOD, 15 January 2010)

⁵⁷⁰ William Lynn, Deputy Secretary of Defense, *Memorandum: Revised Policy Guidance on Access to Detainees and Detention Facilities in Afghanistan*, (Washington DC: DOD, 19 February 2010)

‘torture, cruel, inhumane, or degrading treatment’.⁵⁷¹ On 6 March, Afghan witnesses testified for the first time at a DRB. The US now exceeded the requirement of the Laws of Armed Conflict (LOAC); the new process was key to the release and re-integration of detainees from the DFIP.⁵⁷²

In February 2010, McChrystal and Stone’s COIN approach to detention began to be operationalised in the field. Marines in the Spin Ghar region were warned that any rough treatment or harsh language aimed at detainees was forbidden. When taking prisoners, Marines were instructed to politely ask detainees to go with them voluntarily. Few detainees resisted; most went without a struggle. Most detainees taken into custody were suspected of planting improvised explosive devices (IEDs) or taking sniper shots at troops.⁵⁷³

As part of Obama’s surge of 30,000 additional troops into Afghanistan, 15,000 US, British, and Afghan forces assaulted the Taliban-controlled city of Marja in Helmand province.⁵⁷⁴ The commencement of the 12-to-18 month campaign to penetrate Taliban-held areas began with the February 2010 operation that was undertaken with the support of the Marja city council.⁵⁷⁵ At the outset, General Petraeus reiterated the importance of treating detainees according to Geneva Conventions and using congressionally approved interrogation methods found in *US Army Field Manual 2-22.3 Human Intelligence Collector Operations*,⁵⁷⁶ which superseded *FM 34-5*⁵⁷⁷ in September 2006 as the military’s guide for intelligence interrogations.⁵⁷⁸ He said

⁵⁷¹ Bovarnick, p. 33

⁵⁷² Ibid, pp. 35, 45

⁵⁷³ Tony Perry, ‘In Afghanistan, Marines handling detainees by the book,’ *LA Times*, 19 February 2010

⁵⁷⁴ Bob Davis, ‘Petraeus: No Need for Extreme Interrogation,’ *WSJ*, 21 February 2010

⁵⁷⁵ Jim Garamone, ‘McChrystal Details Lessons of Marja Offensive,’ *AFPS*, 8 March 2010

⁵⁷⁶ *Field Manual 2-22.3 (34-52): Human Intelligence Collector Operations*, (Washington, DC: Department of the Army, 2006)

⁵⁷⁷ *Field Manual 34-52: Intelligence Interrogation*, (Washington, DC: Department of the Army, 1992)

⁵⁷⁸ Donna Miles, ‘New Documents Outline Detention, Interrogation Policies’, *AFPS*, 6 September 2006

following the Conventions and ‘living our values’ stood the US military in good stead; it also diffused the enemy’s ability to generate propaganda.⁵⁷⁹

In February 2010, the new 42-acre DFIP became fully operational. Under US Army Colonel John Garrity 1,200 US military personnel began implementing COIN ‘inside the wire’ with the goal of rehabilitating insurgents.⁵⁸⁰ Each cell held up to 20 prisoners; rubber mats on the floor marked spots where each detainee placed a thin sleeping mattress. Detainees were fed so well they gained an average of 36 pounds during their imprisonment. Some detainees earned the privilege to speak to friends or relatives via video link. Treating detainees with dignity and respect was the hallmark of the new strategy; Garrity believed angry prisoners were a threat to his guard force and he hoped to ‘change Taliban, one detainee at a time’.⁵⁸¹ Some US prison guards felt the detainees were treated better than they were.⁵⁸²

Holding areas for ‘negative detainees’ were built to separate them from the general prison population.⁵⁸³ The facility was slated to house 2,300 prisoners by the time the US turned it over to the Afghans. The annual operating cost was expected to be US\$5 million, plus additional expenses per detainee. The detention operations command ultimately grew to 1,400 under Garrity,⁵⁸⁴ who planned to add a soccer field and prison farm as part of the overall goal of rehabilitating detainees.⁵⁸⁵

On 19 February 2010, Deputy SECDEF Lynn issued revised guidance on granting access to detainees and detention facilities in Afghanistan. Visits by foreign agencies and personnel were to be coordinated by CENTCOM who would provide

⁵⁷⁹ Jonathan Martin, ‘Petraeus: Afghanistan ‘initial salvo’, *Politico*, 21 February 2010

⁵⁸⁰ Saeed Shah, ‘At New Bagram prison in Afghanistan, some inmates buoyant,’ *McClatchy*, 25 February 2010

⁵⁸¹ Ibid.

⁵⁸² Military #23, Author Interview, Norfolk, VA, 24 April 2011

⁵⁸³ Saeed Shah, ‘With new Bagram prison, U.S. looks to put bad press of years past to rest,’ *Miami Herald*, 25 February 2010

⁵⁸⁴ Henry Cuningham, ‘McRee is commander of 16th MP Brigade,’ *Fayetteville Observer*, 2 October 2010

⁵⁸⁵ Richard Beeston, ‘Britain ready to hand over detainees to United States again,’ *The Times*, 22 May 2010

written notice seven days prior to the visit to the Director of the Joint Staff and USD(P).⁵⁸⁶ Any member of a foreign delegation interviewing or debriefing detainees was required to sign an agreement to abide by DOD interrogation policies and procedures. The guidance demanded a DOD interrogator supervise and monitor interrogations, debriefings, and questioning sessions involving foreign delegations.⁵⁸⁷

Soldiers from the 202nd MI of Fort Gordon, Georgia, deployed in October 2009 as part of TF-Deuce to support joint HUMINT collection operations.⁵⁸⁸ The DFIP had 16 interrogation booths equipped with one-way windows and cameras to allow for monitoring. This type of transparency was crucial to preventing the allegations of abuse that had plagued other prisons. Relying solely on approaches in the *FM 2-22.3*, interrogators continued to produce a steady flow of intelligence in support of combat operations.⁵⁸⁹

According to Theatre Intelligence Group Commander Colonel Anthony MacDonald, the new facility significantly improved his interrogators' ability to collect information. At the BTIF, his group could only conduct about 100 interviews per week and only ask questions on specific topics; using new procedures at the DFIP, they increased interviews by 200% to about 300 per week. One new procedure adopted at the facility was to have guards blindfold and transport detainees via wheelchair throughout the complex, whether they went to an interrogation room in a secret part of the prison, to the clinic, or to meet visitors. The practice ensured that detainees never knew when or what prisoners actually spoke with interrogators and, thus, some became more willing to give information.⁵⁹⁰

⁵⁸⁶ William Lynn, Deputy Secretary of Defense, *Memorandum: Revised Policy Guidance on Access to Detainees and Detention Facilities in Afghanistan*, (Washington DC: DOD, 19 February 2010), pp. 2-3

⁵⁸⁷ *Ibid.*, p. 5

⁵⁸⁸ Melissa Tune, '202nd Military Intelligence Battalion heads to Afghanistan from Fort Gordon,' *CBS News 12*, 16 October 2009

⁵⁸⁹ Alissa Rubin, 'U.S. Backs Trial for Four Detainees in Afghanistan,' *NYT*, 17 July 2010

⁵⁹⁰ Alan Gomez, 'How the U.S. reshaped an Afghan prison's image,' *USA Today*, 4 August 2010

Intelligence collected at the DFIP yielded confirmation of the enemy's assessment of the US strategy to step up targeted killings of Taliban leadership; interrogators learned the Taliban faced a crisis because potential leaders feared taking prominent roles that would make them US targets. This type of intelligence was vital to decision makers.⁵⁹¹ Although scheduled to be turned over to the Afghan government in January 2011, Admiral Harward said the intelligence operations at the DFIP would be the last thing turned over and suggested the US partner with the Afghans 'for a very long time' in collecting intelligence.⁵⁹²

When detainees were released as part of HDC phase four, US authorities, the Afghan government, the detainee's family, and tribal leaders participated in a highly-scripted 'release *shura*',⁵⁹³ a ceremony where the detainee signed a pledge to support the government and the local authorities agreed to act as guarantor.⁵⁹⁴ Afghan National Army (ANA) Commander for Oversight of Detention and Reintegration, Brigadier General Mohebur Rahman, worked closely with Harward on the development of a reintegration process.⁵⁹⁵ Wording of the release *shuras* was closely aligned with the Pashtunwali code.⁵⁹⁶ Pashtunwali, or 'way of the Pashtuns' was the governing ideology of the Pashtun tribes that dated back to pre-Islamic times.⁵⁹⁷

In March 2010, Petraeus and SECDEF Gates reviewed the 96-hour rule, a policy unpopular among US soldiers because it forced units to either release or transfer detainees to the Afghans within 4 days of capture. Petraeus extended the deadline to 14

⁵⁹¹ Helene Cooper and Mark Landler, 'Targeted killing is new U.S. focus in Afghanistan,' *NYT*, 1 August 2010

⁵⁹² Gomez

⁵⁹³ Jean MacKenzie, 'Afghanistan: US steps up prisoner releases,' *Global Post*, 21 July 2010

⁵⁹⁴ Patrick Falby, 'Hopes for peace with Afghan prisoner releases,' *AFP*, 5 July 2010

⁵⁹⁵ William O'Brien, 'Khost Governor Hosts Release Shura for 12 Former Detainees,' *Blackanthem Military News*, 26 July 2010

⁵⁹⁶ Author Unknown, 'Former detainees released to families, tribal elders,' *CENTCOM*, 21 July 2010

⁵⁹⁷ Jere Van Dyk, *Captive: My Time as a Prisoner of the Taliban*, (NYC, NY: Times Books, 2010), pp. 13, 38-39

days for regular USFOR-A military units,⁵⁹⁸ but non-US ISAF units were still under orders to turn detainees over to the Afghan government after 96 hours. Detainees in USFOR-A custody could also be sent to the DFIP for further processing.⁵⁹⁹

The 96-hour rule was instituted in December 2005 to placate the Afghan government because of the increased numbers of citizens being detained.⁶⁰⁰ The rule also resulted from NATO's attempt to create a uniform detention policy among member nations. Prior to the Abu Ghraib prison scandal in early 2004, forces fighting alongside the US turned prisoners over to the US, who had the only detention facilities in Afghanistan. After Abu Ghraib, other governments would not allow their forces to turn captured prisoners over to the US, yet they did not want to build their own long term detention facilities.⁶⁰¹

The 96-hour rule complicated interrogation operations for USFOR-A; it placed tremendous pressure on interrogation teams and translators. There was not adequate time to question detainees and, in many cases, it was logistically impossible to physically move detainees to a release location in such a short amount of time.⁶⁰² The rule was also devastating to US troop morale and endangered their lives.⁶⁰³ Soldiers captured combatants but were obligated to release them, only to face them right back on the battlefield.⁶⁰⁴ This chronic 'catch and release' issue was also a problem in Iraq.⁶⁰⁵ The only detainees the 96-hour rule did not apply to were those captured by SOF or TF-

⁵⁹⁸ Abbie Boudreau and Scott Zamost, 'U.S. to end 96-hour rule for Afghan detainees,' *CNN*, 17 March 2010

⁵⁹⁹ Bovarnick, p. 21

⁶⁰⁰ Abbie Boudreau and Scott Zamost, 'U.S. reviewing Afghanistan detainee policy,' *CNN*, 18 February 2010

⁶⁰¹ Ashley Deeks, 'Detention in Afghanistan: The Need for an Integrated Plan,' *CSIS*, 14 February 2008

⁶⁰² Brett Baier, 'Growing Dissatisfaction Among The Troops,' *Fox News*, 28 August 2009

⁶⁰³ Dianna Cahn, 'U.S. forces struggle with Washington's perceptions and reality in Afghanistan,' *Stars and Stripes*, 23 October 2009

⁶⁰⁴ Philip Crowley, Assistant Secretary, 'Daily Press Briefing,' *US Department of State*, 19 February 2010

⁶⁰⁵ Grossman, Elaine, 'US Officers in Iraq: Insurgents are Repeatedly Captured and Released,' *InsideDefense*, 7 December 2006

Paladin, a unit dedicated to defeating improvised explosive device (IED) networks; these two groups were allowed to hold HVDs indefinitely.⁶⁰⁶

Improvements in US detention operations in 2010, as well as the opening of the DFIP, increased the confidence level of the British government. In May, Britain announced that officials from the Foreign and Commonwealth Office and the Ministry of Defence would be assigned to US detention teams as a prelude to full cooperation. The decision coincided with ‘growing concerns about the fate of detainees held by the Afghan authorities’.⁶⁰⁷

In early June, Afghan tribal leaders met with President Karzai to approve a plan to seek peace with the more moderate faction of the Taliban. The programme called for the removal of militant leaders from UN blacklists, peace talks with those who renounced violence, and a review of all 15,000 prisoners held by the Afghan government. Although the plan did not explicitly demand the review of detainees under US control, General Martins said the US would enable a review. On 21 June, the Afghan government released the first 14 Taliban prisoners under the new plan. General Martins announced that 25 prisoners at the DFIP would also be released as part of the new process. Between January and June 2010, 114 prisoners were released from US custody.⁶⁰⁸

In June 2010, after a year as Commander of US and NATO Coalition Forces in Afghanistan, General McChrystal prepared an assessment for NATO and ISAF Defence Ministers. It outlined substantial progress in detention including: the transition to Afghan lead, the replacement of the BTIF by the DFIP, the priming of the Afghan Ministry of Defence to assume control of the DFIP in 2011, the new detainee review process, the release of 114 prisoners in accordance with 27 Afghan-led reintegration

⁶⁰⁶ Max Boot, ‘U.S. and allies must detain Afghan prisoners,’ *WP*, 29 December 2009

⁶⁰⁷ Richard Beeston, ‘Britain ready to hand over detainees to United States again,’ *The Times*, 22 May 2010

⁶⁰⁸ Sayed Salahuddin, ‘Taliban suspects released after Afghan jirga deal,’ *Reuters*, 21 June 2010

shuras, the promotion of transparency across a spectrum of detention activities, and the development of the Afghan government's biometric data collection effort.⁶⁰⁹

On 14 July 2010, Admiral Harward said JTF-435 represented:

. . . PhD level JTF organizational lessons learned, especially in the evolution from a JTF with one mission to a CJIATF with multiple strategic responsibilities, significant coalition, IA and Afghan integration, while functioning in a supported/supporting nature with ISAF and the Embassy and remaining a USFOR-A organization.⁶¹⁰

The US Embassy in Kabul and the State Department touted it as 'a model for the future',⁶¹¹ but it had its challenges; Colonel Eberhart compared it to 'building an airplane while in flight'.⁶¹² The TF accomplished daily detention missions by taking on the existing detention organisations while simultaneously folding them into the new organisation.

The relationship between Obama and McChrystal was tenuous from the start. The general's reputation for 'saying and thinking what others are afraid to',⁶¹³ may have been a factor in his appointment, but when his staff members' off-the-record remarks to reporter Michael Hastings were published in *Rolling Stone* in June 2010, McChrystal was forced to resign. The remarks were critical of civilian government officials including: Vice President Joseph Biden, National Security Advisor James Jones, US Ambassador to Afghanistan Karl Eikenberry, and Special Representative for Afghanistan and Pakistan Richard Holbrooke.⁶¹⁴

On 22 June SECDEF Gates issued a statement:

⁶⁰⁹ General Stanley McChrystal, Commander, US Forces Afghanistan and International Security and Assistance Forces Afghanistan, *Campaign Overview for NATO and ISAF Defense Ministers*, June 2010, Kabul, Afghanistan, Slide 12

⁶¹⁰ Eberhart, slide 7

⁶¹¹ Ibid.

⁶¹² Ibid., slide 10

⁶¹³ Peter Beaumont, 'Stanley McChrystal: The president's stealth fighter,' *The Observer*, 27 September 2009

⁶¹⁴ Major Garrett, 'Obama Relieves McChrystal Over Critical Remarks, Names Petraeus as Replacement,' *Fox News*, 23 June 2010

I read with concern the profile piece on Gen. Stanley McChrystal I believe that Gen. McChrystal made a significant mistake and exercised poor judgment in this case. We are fighting a war against al Qaeda and its extremist allies, who directly threaten the United States, Afghanistan, and our friends and allies around the world. Going forward, we must pursue this mission with a unity of purpose. Our troops and coalition partners are making extraordinary sacrifices on behalf of our security, and our singular focus must be on supporting them and succeeding in Afghanistan without such distractions.⁶¹⁵

On 23 July upon McChrystal's retirement, SECDEF Gates said:

McChrystal's contributions to the wars in Iraq and Afghanistan were ground breaking . . . as the general employed every tool available to create success on the battlefield. Over the past decade, no single American has inflicted more fear and more loss of life on our country's most vicious and violent enemies than Stan McChrystal.⁶¹⁶

McChrystal was later cleared of any wrongdoing by the DOD Inspector General (IG) on 8 April 2011 who cited failures in the previous investigation to properly investigate allegations made against General McChrystal and his staff.⁶¹⁷ The IG further stated 'that available evidence did not support the conclusion that McChrystal had violated any applicable legal or ethics standard'.⁶¹⁸

On 23 June 2010, President Obama nominated CENTCOM Commander, General Petraeus, to replace McChrystal as USFOR-A/ISAF Commander.⁶¹⁹ On 29 June, Petraeus told the Senate Armed Services Committee 'Afghanistan is a test of wills, and the enemy has to know the United States and its allies have the will to prevail'.⁶²⁰ He reiterated the US main effort was a COIN strategy to clear-hold-build; clearing the area physically of insurgents by killing or detaining them, holding the areas

⁶¹⁵ Author Unknown, 'Gates Issues Statement on McChrystal Profile,' *AFPS*, 22 June 2010

⁶¹⁶ Michael Carden, 'McChrystal Retires Amid Praise for Career,' *AFPS*, 23 July 2010

⁶¹⁷ Michael Child, Acting Deputy Inspector General for Administrative Investigations, Memorandum for the Inspector General Department of the Army, *Subject: Review of Army Inspector General Agency Report of Investigation (Case 10-024)* (Washington, DC: DOD, 8 April 2011)

⁶¹⁸ Robert Burns, 'McChrystal cleared in Pentagon inquiry,' *AP*, 18 April 2011

⁶¹⁹ Garrett, 'Obama Relieves McChrystal Over Critical Remarks, Names Petraeus as Replacement'

⁶²⁰ Jim Garamone, 'Petraeus Calls Afghanistan a Test of Wills,' *AFPS*, 29 June 2010

just cleared by placing US troops in the area to provide security, and building up any needed infrastructure to improve the lives of the locals.⁶²¹ While clear-hold-build took place, operations to kill, capture, or change insurgent behaviour continued.⁶²²

On 24 July, Petraeus met with senior Afghan officials at Camp Phoenix in Kabul to reaffirm the agreement to turn the DFIP over to the Afghan Ministry of Defence in January 2011. Several hundred ANA MPs completed training in preparation for the transfer of detainee operations. The first class of soldiers finished the Afghan Correction Officer Course in May 2010 and the Advanced Individual Training programme in July. The new Afghan MPs were assigned to the DFIP for on-the-job training under the tutelage of US MPs.⁶²³

Although progress was made, the detention mission remained dangerous. On 7 August 2010, news sources reported a detainee attempting to escape a detention facility in Kandahar (not the STHF, which had been closed, but a facility run by Afghan National Security Forces) killed two US Marines. The report indicated the detainee slipped out of a room where he was praying and managed to get a rifle. The Marines were killed trying to subdue the detainee who was eventually killed by small-arms fire.⁶²⁴ Details released under the Freedom of Information Act later described two detainees acquiring weapons from an arms room left open. The detainees grabbed an AK-47 rifle and a rocket propelled grenade (RPG) and attempted to shoot down an Osprey helicopter at the landing zone 100 yards from their cell. Aboard the helicopter was Admiral Harward who had just finished a meeting at the headquarters of the 1st Battalion, 2nd Marines, in the Musa Qala district of Helmand province and was leaving as the escape took place. An Irish contractor opened fire on the detainees forcing them

⁶²¹ Eric Rosenbach and Aki Perits, 'New Find-Fix-Finish Doctrine,' JFQ, Issue 61, 2nd Quarter 2011, (St. Louis, MO: NDU Press, April 2011), p. 96

⁶²² Garamone

⁶²³ Maria Yagar, 'Petraeus, officials discuss transfer of detainee ops,' *CENTCOM*, 26 July 2010

⁶²⁴ Author Unknown, 'Two U.S. Marines killed in attempted Afghan prison break,' *CNN*, 9 August 2010

to take cover before firing at the helicopter. The contractor was killed along with the two Marines.⁶²⁵

On 16 September 2010, two more Afghan detainees were discharged from the DFIP under a HDC phase four release *shura* in Logar province attended by Governor Atiqullah Ludin. He welcomed them back into the community and the Jordanian Army General responsible for security in the area reiterated that ISAF was not fighting against Islam, but working to help the Afghan government promote peace. Afghan Deputy Commander of CJIATF-435 Major General Marjan Shuja explained his mission to work with local Afghan leaders to ensure detainees were treated fairly, received education, reintegrated into Afghan society, and did not re-join the insurgency.⁶²⁶ Successful reintegration, according to Petraeus' COIN strategy, meant 'removing Afghan fighters by bringing those willing to renounce violence and accept the Afghan constitution back into their communities with honour and dignity'.⁶²⁷ The high level attendees at the release *shuras* added solemnity to the detainees' oaths.

On 23 September, 189 ANA MPs became the third group of graduates from the Detention Operations Training Centre in Parwan run by the 96th MP Battalion's TF-Spartan. ANA MPs completed two weeks of language training and eight weeks of detention operations training (the Detention Operations Transition Course⁶²⁸) in preparation for assuming guard duties at the DFIP. An additional 700 ANA MPs began training; 100 more were already on duty. General Shuja and ANA Parwan and Pul-e-Charki MP Brigade Commander General Safiullah Safi congratulated the new MPs on the service they were providing to the nation by working 'shoulder to shoulder' with US

⁶²⁵ Dan Lamothe, '3-star SEAL's Osprey targeted in jailbreak,' *Navy Times*, 6 June 2011

⁶²⁶ Maria Yager, 'Two former detainees released during Logar Shura,' *Black Anthem*, 26 September 2010

⁶²⁷ Yager, 'Petraeus: Captured Enemy to be Turned Over to Afghans,' *CENTCOM*, 30 September 2010

⁶²⁸ Yager, 'Navy military police battalion changes command, swaps crew,' *CENTCOM*, 13 May 2011

troops.⁶²⁹ The Afghan detention brigade was based in Parwan at the ANA Logistical Support Area.⁶³⁰

CJIATF-435's primary mission was to improve detention operations for the growing prisoner population. (Appendix H) Their secondary duty was to train Afghans to take over the mission. By the end of September 2010, more than 160 Afghan soldiers completed training and joined 1,200 US troops assigned to guard the DFIP. An additional 600 ANA soldiers began training for the mission.⁶³¹

The newly trained ANA MPs were desperately needed. While the DFIP was continually improving efforts to reform the ANDF, by the end of 2010, support for the Taliban among the 5000 inmates was so widespread the Taliban viewed the facility as a valuable recruiting centre. Additionally, many prisoners maintained close communications with insurgents outside the prison via smuggled contraband cell phones and even launched and planned attacks from within the prisons. Afghanistan's former head of intelligence, Amrullah Saleh, said the prison was 'eroding battlefield gains . . . We are not de-Talibanizing them [prisoners] . . . We are further radicalizing them. We are giving them control of the prison.'⁶³²

On 28 September, General Petraeus toured the DFIP and said:

When I took command of Multinational Force-Iraq in February 2007, we still had Camp Bucca with 17,000 detainees at that time and it grew larger . . . We still had all of the detainees in huge enclosures. It was just fenced-in enclosures of about 800 to 900 detainees per enclosure. Obviously, we have come a long way since then . . . This is about doing it right.⁶³³

⁶²⁹ Author Unknown, 'Third Cohort of Afghan National Army Police graduate,' *CENTCOM*, 23 September 2010

⁶³⁰ Yager, 'Afghan commander tours Afghan National Army Logistics Support Area Parwan,' *CENTCOM*, 28 March 2011

⁶³¹ Yager, 'Petraeus: Captured Enemy to be Turned Over to Afghans'

⁶³² Ernesto Londono and Joshua Partlow, 'Afghan prison an insurgent breeding ground,' *WP*, 6 March 2011

⁶³³ Maria Yager, 'Petraeus Discusses Future of Afghan Detainees,' *AFPS*, 28 September 2010

He said progress could be traced to the implementation of the rehabilitation and reintegration programmes.⁶³⁴

On 30 September 201, seven Afghan teachers were recognised for their efforts at the DFIP. Instructors taught courses in Pashto, agriculture, masonry, carpentry, and tailoring. By arming detainees with basic literacy and a skill or trade, the instructors hoped they would be ‘less likely to turn to the insurgency for economic gain’ once they were released and reintegrated into their home villages.⁶³⁵ The 46th MP Commander TF-Peacekeeper General Mandi Murray and CJIATF-435 Director of Reintegration Colonel Robert Burk presented the awards. The 46th MP Command, TF-Peacekeeper, a subordinate CJIATF-435 command, oversaw detention operations and the transition of detention operations at the DFIP to the Afghan government. The Afghan Ministry of Education awarded 66 detainees certification for completing a six month Pashto literacy course at the DFIP, where they learned to read and write to a minimum third grade level. Detainees who successfully completed this course were offered advanced courses in Pashto and English.⁶³⁶

On 1 October, ANA MPs assumed majority responsibility for one of the four detainee housing units (DHUs) at the DFIP. ANA General Safi encouraged his troops on reaching the milestone: ‘We must prove that we are able to do this without help. . . . This is a test for you today and I want you to pass that test. With the help and training you have been given you will be able to perform all of your tasks’.⁶³⁷ Safi said it was a great day for Afghanistan as the country prepared to take over full control of detention operations in 2011.

⁶³⁴ Ibid.

⁶³⁵ Author Unknown, ‘Afghan instructors recognized for reintegration efforts,’ *CENTCOM*, 29 September 2010

⁶³⁶ Jason Boyd, ‘Detainees complete Pashto literacy course,’ *CENTCOM*, 1 October 2010

⁶³⁷ Author Unknown, ‘ANA Soldiers assume greater responsibility in DFIP transition process,’ *CENTCOM*, 1 October 2010

The ability to protect the local population from insurgents was paramount in the success of COIN operations. In Afghanistan, with population centres scattered across more than 650 thousand square kilometres, the building and maintaining of roads to link cities was a high priority. According to Dr. David Kilcullen's Afghan field study, the construction of accessible roads conveyed long term commitment to the local population.⁶³⁸ Further, Kilcullen said well-maintained roads reduced the frequency and success of IEDs because of the difficulty of planting them in pavement and the ease of spotting them against blacktop.⁶³⁹

One of the major challenges at the ANDF was the road leading from Kabul to the prison. On 7 October 2010, Afghan and US dignitaries broke ground on a new road to improve access to the ANDF and assist local villagers by increasing traffic to their businesses. The project to pave 4km of road was expected to cost US\$974,230 and scheduled to be completed December 2010. Once finished, the road allowed family members and legal counsel to safely visit detainees. Admiral Harward applauded the construction and its impact on Afghan citizens: 'the more roads we can build, the better . . . It's important for their families and their future'. He promised to walk the road with villagers upon its completion.⁶⁴⁰

On 11 October, CJITAF-435 held a corrections conference at Camp Phoenix attended by approximately 50 Afghan leaders. They discussed the state of correction operations, prioritised challenges, and discussed facility requirements. According to Director of the Central Prison Directorate General Amir Mohammad Jamsheed, the prisons were 'a very hot issue' among the Afghan population, and it was important to

⁶³⁸ Kilcullen, pp. 94-95

⁶³⁹ Ibid., p. 99

⁶⁴⁰ Author Unknown, 'Road project to help locals, increase access,' *CENTCOM*, 8 October 2010

understand the detention requirements necessary to defeat the insurgency and promote the rule of law.⁶⁴¹

On 11 October, 13 more detainees graduated from the Afghan-led HDC phase four reintegration programme and were released from the DFIP. General Shuja told the men he hoped they would return peacefully to their villages and ‘not allow anything to sway [them] again’.⁶⁴² Nearly 240 detainees were released from the DFIP between January and October 2010 in 40 release *shuras*.

Although the US made significant strides in reforming detention operations, allegations of prisoner abuse against coalition forces continued to permeate the news media. On 14 October 2010, the Open Society Foundation, funded by liberal activist George Soros who resides with the judicial-Geneva Conventions camp, published a 16-page report detailing instances of detainee abuse. Allegations involved detainees held in a separate facility outside the DFIP in Bagram where they were subjected to excessive cold and light, stripped nude upon arrival, given inappropriate and inadequate food, deprived of bedding and sleep, denied practice of religious obligations and physical exercise, and denied access to the ICRC.⁶⁴³ Similar accusations from nine former detainees were reported by the *BBC* in May 2010.⁶⁴⁴

Reports claimed the facility, called *Tor* Prison or the Black Jail, was run by SOF or the DIA. Military Spokesperson Captain Pamela Kunze said the ICRC was aware of temporary holding centres and that operations at the centres complied with US and international law. She said the ‘nature of warfare requires that the United States protect certain information from public disclosure in order to protect operational security’.⁶⁴⁵ Similar allegations were made in January 2010 when two Afghan teens said they had

⁶⁴¹ William O’Brien, ‘Afghans, partners meet at Corrections Day Conference,’ *CENTCOM*, 11 October 2010

⁶⁴² Jason Boyd, ‘13 Former Detainees Released During Parwan Release Shura,’ *Black Anthem*, 11 October 2010

⁶⁴³ Author Unknown, ‘Confinement Conditions at a US Screening Facility at Bagram Airbase,’ *Open Society Foundations*, 14 October 2010

⁶⁴⁴ Hilary Andersson, ‘Second jail’ at Afghan air base,’ *BBC*, 11 May 2010

⁶⁴⁵ Patrick Markey, ‘Afghan detainees mistreated in secret U.S. jail: report,’ *Reuters*, 14 October 2010

been beaten and humiliated at the prison before being transferred to Afghan authorities.⁶⁴⁶

On 27 January 2010, Admiral Harward denied the existence of secret prisons:

There are no black-jail secret prisons . . . We do have field detention sites we do not disclose, but they're held there for very short periods, and then they're moved--if they're determined to need additional internment, they're moved to the detention facility at Parwan or released.⁶⁴⁷

Harward insisted that all detainees under his command had access to the ICRC.

On 13 May, investigative journalist Seymour Hersh accused US troops of administering 'battlefield executions' of captured combatants. Hersh, who broke the Abu Ghraib abuse story, said multiple sources had told him about prisoner executions in the field:

What they've done in the field now is, they tell the troops, you have to make a determination within a day or two or so whether or not the prisoners you have, the detainees, are Taliban. You must extract whatever tactical intelligence you can get, as opposed to strategic, long-range intelligence, immediately. And if you cannot conclude they're Taliban, you must turn them free . . . if they can't prove they're Taliban, bam. If we don't do it ourselves, we turn them over to the nearby Afghan troops and by the time we walk three feet the bullets are flying.⁶⁴⁸

On 17 October, an Afghan detainee captured the day before was found dead in his cell at a temporary ISAF holding facility in Kandahar.⁶⁴⁹ Later, the detainee was identified as Mullah Muhibullah, a senior Taliban leader in the Arghandab district of Kandahar province. A US soldier was accused of the shooting. Both the US Army Criminal Investigation Division and the Afghan government conducted investigations as to why the soldier allegedly removed other detainees from the holding cell and shot

⁶⁴⁶ Joshua Partlow, 'U.S. military investigates allegations of detainee abuse in Afghanistan,' *WP*, 8 January 2010

⁶⁴⁷ Spencer Ackerman, '[McChrystal's Chief Detentions Officer: 'All Detainees Under My Command' Have Red Cross Access](#),' *Washington Independent*, 27 January 2010

⁶⁴⁸ Seymour Hersh, 'US Troops Carrying Out "Battlefield Executions" In Afghanistan, Seymour Hersh Says,' *Huffington Post*, 13 May 2010

⁶⁴⁹ Author Unknown, 'NATO probes death of Afghan detainee,' *AFP*, 18 October 2010

Muhibullah.⁶⁵⁰ The death was the first known execution style murder of a detainee in US military custody. While overall detainee operations in Afghanistan operated smoothly according to phase three of the HDC, this incident was a temporary regression back to phase two.

On 3 November 2010, 14 detainees were freed from the DFIP at a Helmand province release *shura*; this further underscored the pace at which HDC phase four detainee releases were picking up. Helmand Deputy Governor Haji Abdul-Satar exhorted the released detainees to do something good for their country. He invited those still at odds with the government to join him in making peace and invited insurgents to put down their weapons and ‘join us in the process. Some are saying that because there are foreigners here it is time for *jihad*, but the foreigners didn’t come here to kill innocents. They came here to help the people build a secure Afghanistan. Come and join us build a better Afghanistan’.⁶⁵¹

On 4 November, two more detainees were released from the DFIP in a Parwan provincial *shura*. Deputy Minister of Defence Enayatullah Nazari told the men: ‘May God help you in your return to your families and your villages, and I hope that you can continue your peaceful ways in the future’.⁶⁵²

On 4 November, CJIATF-435 announced that more than 500 ANA Soldiers had completed training and Afghan forces were guarding two of the four DHUs at the DFIP.⁶⁵³ On 30 November, Admiral Harward announced the four DHUs were ‘primarily’ manned by the ANA with US oversight.⁶⁵⁴ He said that since January 2010, of the approximately 5,500 who were detained in Afghanistan, about 1,100 were sent to

⁶⁵⁰ Maria Abi-Habib, ‘U.S. Soldier Held in Death of Afghan Detainee,’ *WSJ*, 19 October 2010

⁶⁵¹ Maria Yager, ‘Afghan leaders call for peace as 14 detainees released at Helmand Shura,’ *CENTCOM*, 4 November 2010

⁶⁵² Jason Boyd, ‘Former detainees released during Parwan shura,’ *CENTCOM*, 4 November 2010

⁶⁵³ Maria Yager, ‘Afghan leaders call for peace as 14 detainees released at Helmand Shura,’ *CENTCOM*, 4 November 2010

⁶⁵⁴ Terry Cronk, ‘Afghan Prison Guards ‘Fully Trained,’ Commander Says,’ *AFPS*, 30 November 2010

the DFIP. Over 11 months, more than 550⁶⁵⁵ had been released from the DFIP and more than 300⁶⁵⁶ had participated in one of more than 50 release *shuras*.⁶⁵⁷ Expansion at the DFIP included the construction of three additional DHUs completed March 2011,⁶⁵⁸ almost doubling capacity at the DFIP from 1,650 to 3,200 detainees. Harward reiterated the transition plan was ‘conditions-based’ and the Afghan transfer of responsibility for the DFIP would ‘be at their pace’.⁶⁵⁹

The 17 November 2010 North Atlantic Treaty Organisation (NATO) meeting in Lisbon, Portugal, was crucial to stabilisation efforts in Afghanistan. NATO set the goal of turning security over to the Afghan government by the end of 2014, but committed to remain in the country well beyond that time.⁶⁶⁰ NATO Secretary General Anders Fogh Rasmussen said:

We will stay as long as it takes to finish our job. NATO is in this for the long term. We will not transition until our Afghan partners are ready. We will stay, after transition, in a supporting role . . . Let me stress the agreement we have signed today is not only a signal to the Afghan people we will stay committed . . . it’s a signal we won’t leave behind a security vacuum that could create instability.⁶⁶¹

Before the summit, President Karzai had been critical of the number international troops in Afghanistan, their role in civilian casualties, and the frequency of SOF night raids. General Petraeus said the raids were necessary to execute COIN strategy, but pledged to work to address Karzai’s concerns.⁶⁶² On 28 November 2010, CJCS Mullen said the US was on track to begin drawdown July 2011, but assured there

⁶⁵⁵ Ibid.

⁶⁵⁶ George Cloutier, ‘Two former detainees released during Paktika shura,’ CENTCOM, 30 November 2010

⁶⁵⁷ Adam Stump, ‘Two detainees released during shura,’ CENTCOM, 14 November 2010

⁶⁵⁸ Author Unknown, ‘Media Shoots Imagery at Afghan Detention Facility,’ *AFPS*, 30 August 2010

⁶⁵⁹ Cronk

⁶⁶⁰ Jim Garamone, ‘2014 is Aspirational Goal for Security Turnover to Afghans,’ *AFPS*, 18 November 2010

⁶⁶¹ Wire Staff, ‘NATO, Afghanistan hammer out long-term ties,’ *CNN*, 20 November 2010

⁶⁶² Author Unknown, ‘Karzai Call to Cut Troops Frustrates Petraeus,’ *AP*, 15 November 2010

would be a large number of US and allied troops in Afghanistan well beyond 2011.⁶⁶³ Secretary Gates reiterated the commitment that US troops would be in Afghanistan after the 2014 withdrawal of combat troops.⁶⁶⁴

On 17 January 2011, the first fully run DFIP Afghan DHU Delta was opened. This indicated the most significant benchmark in the process of turning over control of detention operations to the Afghanistan government. The Parwan and Pol-e-Charki MP Brigades under the direction of the ANA assumed responsibility for DHU Delta, which held pre-trial detainees and post-trial convicts. Although the goal of turning over all detention operations by January 2011 was missed, this milestone was part of the 'broader conditions-based transition of detention operations'.⁶⁶⁵ As Afghan capabilities continued to increase, the speed of the overall transition also accelerated.⁶⁶⁶ On 19 January, after a nine-month deployment at the DFIP, the 193rd MP Battalion - TF Force Rocky Mountain, completed their tour of duty. The TF trained the first ANA MP soldiers to work at the DFIP and provided for more than 1000 visits by Afghan government officials and the ICRC.⁶⁶⁷

On 20 January 2011, 143 Afghan soldiers graduated from the 10 week Detention Operations Transition Course in Parwan and started six weeks of on the job training before beginning detention operations in the DFIP. They joined 600 Afghan detention guards who had previously certified.⁶⁶⁸ Afghan guard training cohort seven graduated almost 400 additional troops 2 March, which was the largest training class to date.⁶⁶⁹

⁶⁶³ Jim Garamone, 'Mullen: U.S. Drawdown in Afghanistan to Begin in July,' *AFPS*, 28 November 2010

⁶⁶⁴ Author Unknown, 'Gates: US Should Stay in Afghanistan,' *AP*, 7 March 2011

⁶⁶⁵ Author Unknown, 'New facility marks increased capacity for Afghan Rule of Law efforts,' *CENTCOM*, 17 January 2011

⁶⁶⁶ Michael Gottlieb, 'Discussion of Theater Detention Operations,' *Duke Law School*, 14 April 2011

⁶⁶⁷ Maria Yager, 'MP Battalion's work with Afghan soldiers sets course for transition,' *CENTCOM*, 23 January 2011

⁶⁶⁸ Jason Boyd, 'Sixth cohort of Afghan National Army military police soldiers graduate,' *CENTCOM*, 23 January 2011

⁶⁶⁹ Yager, 'Seventh cohort of Afghan National Army military police soldiers graduate,' *CENTCOM*, 3 March 2011

Cohort eight graduated 137 guards on 21 April⁶⁷⁰ and cohort nine graduated 63 on 19 May⁶⁷¹ bringing the total trained Afghan guard force to roughly 1,343 soldiers. Selected ANA troops were tapped to attend the Senior ANA Leadership Course ‘to increase their institutional knowledge of DFIP operations’ while others participated in the ‘train-the-trainer’ programme to become instructors.⁶⁷²

Re-education of detainees continued; on 5 February, the first 11 detainees scheduled for release completed a new course in civics. Detainees learned about the Afghanistan government structure, the constitution, peace studies, geography, demography, health, and wellness. The objective was to provide graduates with a broader understanding of the changes being implemented in their government and to help them reintegrate into Afghan society.⁶⁷³ Other detainees received instruction in farming skills, techniques, and technology at the DFIP Agricultural Centre. Detainees planted apricot and almond trees, grape vines, wheat, greenhouse tomatoes, cabbage, spinach, and sunflowers.⁶⁷⁴

On 7 February 2011, the 201st MI Battalion completed a 12-month tour of duty at CJIATF-435. In addition to supporting US operations, they created the first Afghan Debriefing Academy and certified the first group of 15 Afghan government interrogators in operations according to international standards. Admiral Harward stated: ‘You [the 201st] have really put us on this path to transition - to building capabilities within the government of Afghanistan, supporting our efforts to move from

⁶⁷⁰ Yager, ‘Eighth cohort of Afghan National Army military police Soldiers graduate,’ *CENTCOM*, 23 April 2011

⁶⁷¹ Timothy J. Cordeiro, ‘Ninth cohort of Afghan National Army military police soldiers graduate,’ *CENTCOM*, 20 May 2011

⁶⁷² Maria Yager, ‘Battalion’s partnership prepares Afghans for greater role in Parwan detention facility,’ *CENTCOM*, 29 April 2011

⁶⁷³ Yager, ‘Empowered detainees to leave Detention Facility in Parwan with new knowledge,’ *CENTCOM*, 6 February 2011

⁶⁷⁴ Yager, ‘Detainees plant trees in observance of Nowruz holiday,’ *CENTCOM*, 21 March 2011

intelligence-based detention operations to evidence-based detention operations . . . This was probably the most challenging part of our work'.⁶⁷⁵

On 5 April, the Afghan Ministry of Defence and the US Rule-of-Law TF signed a memorandum of agreement establishing a vocational training programme for selected insurgents who agreed to renounce the insurgency.⁶⁷⁶ This programme built on the success of the kill-capture programme that was pushing Taliban soldiers to leave the insurgency and go through the official process of reintegration into Afghan society.⁶⁷⁷

According to General David Petraeus:

These are mid-level fighters and below who have had enough, or are tired of just endless fighting, whatever it may be, the pressure and so on, and essentially come forward and say, "I'd like to lay down my weapon. I would like to be reintegrated into society. I'd like protection as I do that". Not a huge number yet, still we would say below a thousand total in the various reintegration events that have taken place in the course of just recent months. But nonetheless, you see some degree of traction and some degree of momentum.⁶⁷⁸

Since taking office, President Obama authorised a '6 fold' increase in night time kill-capture missions against HVTs. This was in line with his shift from detention-interrogation centric to kill centric operations. The proliferation of these raids angered the Karzai Government because of civilian casualties associated with the missions.⁶⁷⁹ The Pushtunwali tribal code concept of *badal*, or revenge killings, was predominant in the areas where much of the collateral damage and deaths occurred. The US continued to implement COIN strategy in an attempt to win the hearts and minds of the Pashtun tribal population over to the coalition.⁶⁸⁰ Although the night time raids were effective in

⁶⁷⁵ Yager, 'Military intelligence battalion strengthens Afghans' intel capability,' *CENTCOM*, 8 February 2011

⁶⁷⁶ Author Unknown, 'Afghan Ministry of Defense and CJATF-435 sign reintegration memorandum,' *CENTCOM*, 5 April 2011

⁶⁷⁷ Grey and Edge

⁶⁷⁸ Ibid.

⁶⁷⁹ Adam Entous and Julian Barnes, 'U.S. Revises Rules for Raids Touted in Review', *WSJ*, 16 December 2010

⁶⁸⁰ Raja G. Hussain, *Badal: A Culture of Revenge and the Impact of Collateral Damage on Taliban Insurgency*, (Monterey, CA: Naval Post Graduate School, 2008), p. 33

killing and capturing HVTs, they created some enemies among even the moderates in targetted areas.

The US military revised night time raid guidelines to better protect civilians, an essential element of COIN-CT strategy.⁶⁸¹ These guidelines included enhanced coordination between high-level US-Afghan military, providing villagers' lists of individuals detained, explanation of who detained them, receipts to catalogue any items seized, and claims instructions for compensation for damaged property. Additionally, Afghan security forces were attached to every mission and appointed to establish initial contact with the locals on target. Also Afghan women were only to be searched by female soldiers.⁶⁸² At a national assembly of tribal elders held in November 2011, they 'advised the Karzai Government to allow the raids to continue as long as they are conducted solely by Afghans'. The government considered training female Afghan Special Forces to interact with females on raids.⁶⁸³

At the forefront of the kill-capture programme was the Joint Special Operations Command (JSOC), 'an almost industrial-scale counterterrorism killing machine' according to Retired Army Lieutenant Colonel John Nagle.⁶⁸⁴ From March to May 2011, JSOC conducted 3,000 missions involving elite SOF against targets on the Joint Prioritised Effects List,⁶⁸⁵ composed of thousands of names of bomb makers, commanders, fighters, logistics people, and facilitators of money and weapons. For General Petraeus, JSOC became an essential tool that 'killed or captured more than 12,000 militants in the last year'.⁶⁸⁶

The climax of the kill-capture programme materialised the night of 1 May 2011, when JTF Operation Neptune's Spear launched a mission codenamed 'Crankshaft',

⁶⁸¹ Entous and Barnes

⁶⁸² Stanley McChrystal, 'ISAF Issues Guidance on Night Raids in Afghanistan,' *ISAF-NATO Public Affairs*, 5 March 2010

⁶⁸³ Deb Reichmann, 'Training Stepped Up for Afghan Special Forces,' *AP*, 26 December 2011

⁶⁸⁴ Grey and Edge

⁶⁸⁵ Gretchen Gavett, 'What is the Secretive U.S. "Kill/Capture" Campaign?', *PBS*, 10 May 2011

⁶⁸⁶ Grey and Edge

against top HVT Bin Laden, at a compound near Abbottabad, Pakistan about 35 miles from Islamabad.⁶⁸⁷ After a decade long hunt, Bin Laden's position was finally fixed. A US Navy SEAL team moved in to kill or capture him; Bin Laden was killed and his body was airlifted to the USS *Carl Vinson* where he received an Islamic burial at sea⁶⁸⁸ after the Saudi government refused to take possession of his body.⁶⁸⁹ Although Bin Laden's death did not end the war in Afghanistan, it did represent a major intelligence victory in the kill-capture programme.

In 2008, then-Senator Obama stated he favoured following the Nuremburg trials model as a way to bring Bin Laden to justice,⁶⁹⁰ but 2 May 2011 he announced:

Today, at my direction, the United States launched a targeted operation against that [Bin Laden's] compound in Abbottabad, Pakistan. A small team of Americans carried out the operation with extraordinary courage and capability. No Americans were harmed. They took care to avoid civilian casualties. After a firefight, they killed Osama bin Laden and took custody of his body . . . Yet his death does not mark the end of our effort. There's no doubt that al Qaeda will continue to pursue attacks against us. We must -- and we will -- remain vigilant at home and abroad.⁶⁹¹

A few months after the raid, US CT Chief John Brennan laid out the Obama Administration's 'Bin Laden raid doctrine' while speaking at Harvard law school. He stated the US preferred to capture and interrogate terrorists, but like the previous Bush Administration, the 'US can protect itself with pre-emptive action against suspects the US believes an imminent threat, wherever they are.'⁶⁹² This was an astounding admission by the Obama administration who derided the Bush administration for just such policies.

⁶⁸⁷ Nicholas Schmidle, 'Getting Bin Laden: What happened that night in Abbottabad,' *The New Yorker*, 8 August 2011

⁶⁸⁸ Marc Ambinder, 'The Secret Team That Killed bin Laden,' *National Journal*, 3 May 2011

⁶⁸⁹ Schmidle.

⁶⁹⁰ Alex Spillius, 'Barack Obama: I Won't Martyr Osama Bin Laden,' *Telegraph*, 19 June 2008

⁶⁹¹ Barack Obama, 'Remarks by the President on Osama Bin Laden,' *White House*, 2 May 2011

⁶⁹² Kimberly Dozier, 'Brennan Maps out bin Laden Raid Doctrine,' *AP*, 17 September 2011

Admiral Harward's command of CJIATF-435 ended shortly after the Bin Laden mission, and in July 2011, he was succeeded by another three-star SOF general officer, Army General Keith Huber.⁶⁹³ Admiral Harward became the Deputy Commander for CENTCOM in Tampa, Florida.⁶⁹⁴

In September, UN investigators found evidence of torture in 16 of the roughly 100 Afghan prisons. ISAF immediately halted all transfers of detainees to Afghan control. International law prohibited the US from transferring prisoners until the facilities could be recertified. Afghans officials initially denied the abuse allegations, but eventually conceded and worked with NATO to bring the prisons up to standard. NATO spokesman General Carston Jacobsen said:

NATO relies on reports from soldiers in the field and independent groups such as the United Nations. We are not responsible to inspect all the prisons. We are responsible for the detainees. When we have reasonable doubt [about abuse] with an installation where detainees are transferred to, then we have to stop the transfer to that installation.⁶⁹⁵

On 16 November 2011, tribal leaders from across the country attend a traditional assembly of Afghan Elders in Kabul. President Hamid Karzai laid out his vision for the country and discussed the Afghan government relationship with the US after the 2014 drawdown. He proposed allowing US bases, but expressed concerns about Afghan sovereignty, specifically, he argued against the detention of Afghan citizens by ISAF forces. He said: 'They [US troops] have no right to operate prisons. This is our land. It is up to the ministries of Justice and Interior to manage the prisons.'⁶⁹⁶ This defined the baseline for detention policy and the role the US would play in Afghanistan post 2014.

⁶⁹³ General Keith Huber, Commander, CJIATF 435, Official Biography, Current as of July 2011

⁶⁹⁴ Admiral Robert Harward, Deputy Commander, CENTCOM, Official Biography, Current as of July 2011

⁶⁹⁵ Heidi Vogt, 'NATO: Afghan Drawdown to Cloud Detainee Monitoring,' *AP*, 15 February 2012

⁶⁹⁶ Hamid Karzai, President of the Islamic Republic of Afghanistan, *Transcript of the speech delivered by President Hamid Karzai in the Traditional Loya Jirga*, Kabul Afghanistan, 16 November 2011

Conclusion

US operations in Afghanistan have moved through at four of the six phases of the HDC since US and coalition forces launched Operation Enduring Freedom on 7 October 2001. Although mistakes have been made and the cycle is not complete, the US military has adapted to a new type of enemy, defined a new status for detainees captured in conflict, and determined new methods to reintegrate detainees into society according to counterinsurgency doctrine.

In phase one of the HDC, beginning 9/11, US forces began planning for combat operations. The historical record indicates there was some thought to initial detention operations, but no preparation to hold detainees long term or foresight to determine their status as fighters for a terror organisation and unrecognised government. As the US military began holding detainees, they scrambled to develop a plan to detain, care for, and interrogate the vast numbers of prisoners captured. The initial two detention holding facilities in Bagram and Kandahar were inadequate and quickly inundated by the large numbers of detainees who overwhelmed the system.

In phase two, detainees were moved to GTMO and the initial Kandahar STHF was closed, but some detainees languished at Bagram. A November death of a detainee at a CIA facility in Kabul and two detainee deaths at the BCP in December 2002 caused by US military abuse brought US detention policy and prisoner treatment under intense scrutiny.

In phase three of the HDC, JTF-180 was charged with improving detention operations at the BCP. The debate over legal status of detainees broiled in the courts and policymakers dithered over what techniques beyond the Army field manual would be allowed during interrogations. The military clarified procedure and reasserted checks over detention operations. The watershed moment for US detention operations globally was the Abu Ghraib prisoner abuse scandal in Iraq and the ensuing

investigations that followed. Examination of detention operations in Iraq, GTMO, and Afghanistan catalysed changes at all US facilities.

During phase three, phase four detainee releases took place under an Afghan government sponsored release and reintegration program. The US military worked to get the detention process right for several years. While care and feeding improved quickly at GTMO and facilities in Iraq, reforms in Afghanistan lagged. Austere conditions in detention sites in Afghanistan persisted and negatively impacted CT and COIN efforts. The creation of JTF-435, a critical HDC phase three accomplishment, helped actualise recommendations from General Stone's study of Afghanistan's detention operations in the summer of 2009. Based on changes and policies successfully implemented in 2007 in Iraq, the COIN suggestions led to a turnaround in a stressed prison system. Afghan detainees were granted the right to appear before DRBs to have their cases heard and reviewed. In some cases they were accorded trials before Afghan courts with legal representation. Detainees began participating in release *shuras* to ensure proper reintegration back into Afghan society after completing various training programmes.

The endgame leading to the end of phase four and into phase five of the HDC began when the US began turning over detention operations to the Afghans in January 2011. Although the timetable was extended to complete the turnover, detention operations are expected to be fully turned over as soon as the Afghans can assume full control of the DFIP.

Guantanamo Bay Case Study

Find information and prevent the next 9/11. That's my mission. That's what [the]

SECDEF said, plain and simple.

- JTF-170/GTMO Commanding Officer, General Michael Dunlavey, USAR⁶⁹⁷

Introduction

This chapter, broken down along the phases of the HDC, will discuss the history of US involvement in Guantanamo Bay, Cuba and how the US military came to use the base as a detention facility in the GWOT. In addition, it will cover the tenures of the commanders of the prison facility since 2001 and key events that depict a balancing act performed by meeting the demands of three agendas: the responsibility to care for detainees' well-being, the imperative to produce useable intelligence, and the DOD Criminal Investigative Task Force (CITF) mandate to collect evidence to prosecute detainees. These missions were executed before the backdrop of an evolving detainee policy.

Historical Context

The US presence at GTMO is rooted in the Spanish-American War of 1898 when the US helped Cubans revolutionaries obtain freedom from Spain. In February 1903, the US signed a lease with the Cuban government to use 45 square miles of water and land as a refuelling base; an official treaty was ratified in December. In 1934, a new treaty reconfirmed the original and granted Cuba and her trading partners free access through the bay. Payment on the lease was set at US\$2,000 annually in gold and a termination clause was added stipulating the lease could only be terminated if both parties consented or the US abandoned the base.⁶⁹⁸

⁶⁹⁷ Michael Dunlavey, Author Interview, Ashburn, VA, 14 March 2009

⁶⁹⁸ M. E. Murphy, *The History of Guantanamo Bay 1493 to 1964*, 5 January 1953

Navy personnel assigned to the base for security and force protection had a detention facility which consisted of three, small, square cells inside a security building to deal with unruly sailors.⁶⁹⁹ Marines at GTMO manned towers on the base perimeter within watch of their Cuban counterparts on the other side of the border. The main cause for tension on base was the Cuban ‘mirrors’ and watching for Cubans trying to escape through the minefield. Some managed to get across; others drifted onto the beach in boats with their families trying to escape.⁷⁰⁰

On 30 September 1991, Haitian insurgents ousted President Jean-Bertrand Aristide and the country plunged into chaos. Thousands of Haitians fled in makeshift rafts and headed for GTMO, just 80 miles from their shores, where they hoped to receive favourable treatment from the US.⁷⁰¹ Operation GTMO was created to manage the influx of Haitian humanity coming onto the island. On 22 November 1991, Marine Brigadier General George H. Walls Jr., Commanding Officer, 2nd Force Service Support Group (FSSG) based out of Camp Lejeune, North Carolina, was tasked to stand up a JTF to provide for the care, custody, and detention of the migrants. By 3 December more than 6,000 Haitians had arrived at GTMO and General Walls was told to prepare for 10,000 more. Wall’s MPs were prepared for the detention mission, as they had guarded prisoners during the recent Gulf War. His new JTF was the most joint, service-mixed operation in recent history.⁷⁰² When Haitians arrived on the island they were placed in detention camps and classified as migrants rather than refugees in order to prevent them from assuming legal status to enter the US.⁷⁰³

The JTF housed migrants in a quickly constructed, large facility called Camp Bulkeley near Kittery Beach. The camp was a detention facility and armed foot patrols

⁶⁹⁹ Military #3, Author Interview, West Bethesda, Maryland, 11 December 2009

⁷⁰⁰ Ibid.

⁷⁰¹ Barbara Crossette, ‘U.S. Expanding Refugee Center As More Haitians Flee Homeland,’ *NYT*, 3 December 1991

⁷⁰² Author Unknown, ‘Operation Guantanamo,’ *Leatherneck*, April 1992

⁷⁰³ Greenberg, p. 14

were conducted around the perimeters to keep the thousands of migrants from escaping. They received provisions including clothes, shoes, food, and televisions.⁷⁰⁴ Eventually five additional camps were created to house all the detainees.⁷⁰⁵ Base law enforcement and JTF security personnel were instructed to treat the migrants with respect while detaining them as prisoners, searching them for weapons, and turning them over to intelligence personnel for screening. Occasionally the Haitians become frustrated and rioted. They made makeshift weapons, threw rocks, and destroyed property, including a fire truck used to spray the rioters with water.⁷⁰⁶

In August 1994, 14,000 Haitians were still at GTMO when Castro allowed a mass exodus of boat people from his country after a spate of anti-government riots in Havana. The Cuban migrant crisis added an additional 34,000 detainees to the already crowded base. Joint Task Group (JTG) Bulkeley, JTF-160 was tasked to manage detention operations as part of Operation Sea Signal.⁷⁰⁷ To alleviate overcrowding at GTMO, a second JTF under Brigadier General James Wilson⁷⁰⁸ undertook Operation Safe Haven and was authorised by the Panamanian government to hold up to 10,000 refugees for six months.⁷⁰⁹

In 1995, USMC Colonel Michael Lehnert arrived from Camp LeJeune, North Carolina to command security forces for both the Cuban and Haitian detention camps.⁷¹⁰ Base security worked with USAF and Army security personnel to assist with the mission that eventually managed more than 48,000 detainees in makeshift camps.⁷¹¹ McCalla hanger, a golf course, and the Haitian detention facility at Camp Bulkeley were used to house the detainees. Intelligence personnel discovered Castro unloaded

⁷⁰⁴ Military #3 Interview.

⁷⁰⁵ Author Unknown, 'Operation Guantanamo,' *Leatherneck*, April 1992

⁷⁰⁶ Military #3 Interview.

⁷⁰⁷ Darren Pitts, 'A Guantanamo Diary-Operation Sea Signal,' *JFQ*, Autumn 1995, pp. 114-120

⁷⁰⁸ *Update to Disturbance in Panama's Operation Safe Haven Camps*, Press release # 686-94, 8

December, 1994, Office of the Assistant Secretary of Defense for Public Affairs, DOD, Washington, DC

⁷⁰⁹ Robert Neske, *The Assumption of Adequacy*, (Fort Leavenworth, KS: CGSC, 1999), p. vii

⁷¹⁰ General Michael Lehnert, USMC Official Biography, 30 November 2006

⁷¹¹ Greenberg, p. 14

his prisons and allowed the criminals to escape to GTMO. These detainees were separated from the rest of the detainee population as quickly as possible and housed at a new JTF-160 camp called X-Ray.⁷¹²

Bringing detainees to GTMO after 9/11 was a logical course for those who had worked previous detention operations in Cuba. The base was large and situated between a minefield and ocean water.⁷¹³

HDC Phase I: The Conflict Starts and Detainees Are Captured

Prior to the arrival of 9/11 Enemy Combatants (ECs) recently captured in Afghanistan, at GTMO, military assignment detailers regarded tours at the sleepy base as one of the best-kept secrets in the Navy.⁷¹⁴ GTMO was in bare bones maintenance mode; it served as a refuelling station, a forward presence for US forces in the Caribbean, an aid and assistance point, and caretaker for the bay and land under the US-Cuban agreement. Only 750 active duty personnel were assigned to the base with an additional 2,000 family members⁷¹⁵ as well as Jamaican, Filipino, and Cuban contractors. Pre-9/11 rumours on base hinted GTMO was to be shuttered and handed back to Cuba. The loss of half the medical officer slots at the base hospital seemed to confirm that GTMO was heading towards closure.⁷¹⁶

Amid heightened security on base in the days after 9/11, personnel at GTMO watched military operations unfold in Afghanistan with a growing sense their mission was about to change.⁷¹⁷ In mid-December 2001, Rear Admiral Jan Gaudio, the Navy Regional Commander for the Southeast US told Captain Robert Buehn, Commander Naval Station GTMO to prepare to receive 300 prisoners within three weeks.⁷¹⁸ As the news spread, many believed detainees would be housed on the leeward side near the

⁷¹² Military #3 Interview.

⁷¹³ Ibid.

⁷¹⁴ Military #14 and #15, Author Interview, Freeport, Maine, 15 December 2009

⁷¹⁵ Greenberg, p. 8

⁷¹⁶ Military #14 and #15 Interview.

⁷¹⁷ Ibid.

⁷¹⁸ Greenberg., p 1

airfield. When plans were announced to hold detainees at Camp X-Ray, near the family housing complex, many worried that military dependants would be evacuated.⁷¹⁹

HDC Phase II: Mistakes Are Made in Detainee Handling and Incarceration

The founding of post 9/11 detention operations at GTMO was complicated by the leadership structure installed by the DOD. Two TFs with separate commanding officers of different ranks and overlapping missions were assigned to the island. This was a clear violation of US military joint doctrine: specifically, the principles of simplicity, unity of command, and synchronization of effort. It lacked the proper command and control (C2) structure to be effective.⁷²⁰ Due to deficiencies in the C2 organization, the mission suffered from conflicting priorities and competing goals. Illustrative of phase six of the HDC, the US military faced a similar C2 challenge during WWII with their strategic interrogation organisation.⁷²¹

On 22 December, USMC Brigadier General Michael Lehnert arrived at GTMO to conduct an assessment as the commander of the new JTF-160⁷²² responsible for detention. Lehnert was the Commanding Officer of the 2nd FSSG at Camp Lejeune, North Carolina,⁷²³ and was selected because his unit was the detention operations assigned unit for the contingency plan for Cuba⁷²⁴ and Lehnert was in General Walls' unit that had run joint detention operations so effectively at GTMO back in the early 1990s. Lehnert commanded the initial set up of the detention operations and served from 21 December 2001 to 28 March 2002.⁷²⁵

⁷¹⁹ Military #14 and #15 Interview.

⁷²⁰ Joint Publication 1: *Doctrine for the Armed Forces of the United States*, (Washington DC: Joint Chiefs, 20 March 2009), pp. 17-18, 29, 51, 85, 87, 91, 156

⁷²¹ Thomas C. Van Cleve, *Official Report on The Interrogation Section Fort Hunt, Virginia, and Camp Tracy, California and MIS-X Section Fort Hunt, Virginia Covering the Period from 1 August 1942 to 1 August 1945*, (Washington, DC: U.S. Government, 1946), pp. 12-19

⁷²² Greenberg, p. 23

⁷²³ Ibid., p. 31

⁷²⁴ Ibid, p. 26

⁷²⁵ Dunlavey Interview.

US Army Reserve Major General Michael Dunlavey was the senior Army Reserve military intelligence officer and a civilian judge from Erie County, Pennsylvania⁷²⁶ and although he was initially mobilised to the NSA after 9/11, he was tapped to be the first commanding officer of JTF-170 at GTMO. Dunlavey was a tough, confident, straight-talking leader with a background in intelligence and interrogation operations during the Vietnam War. He outranked both Lehnert and Baccus and eventually assumed command of both TFs when they were combined into JTF-GTMO.⁷²⁷ Dunlavey was considered by the judicial-Geneva Conventions camp supporters to be the enforcer of the SECDEF and Bush administration's policies and therefore would earn their ire and be much derided in the press.

Army Deputy Chief of Staff for Intelligence (G-2) Lieutenant General Robert W. Noonan, Jr. recommended Dunlavey to the SECDEF based on his experience as a combat veteran, intelligence officer with legal expertise, and a background in interrogation operations. Rumsfeld instructed Dunlavey to 'Find information and prevent the next 9-11'.⁷²⁸ Outside the tight fraternity of active duty generals, Dunlavey embraced the new assignment, but in hindsight realized he was expendable in case things went badly; he had no Pentagon insiders to protect him.⁷²⁹

On 7 January 2002, the US government held 346 detainees in Afghanistan at facilities in Kandahar, Bagram, Mazar-e-Sharif, and aboard the USS *Bataan*. Those sent to GTMO were transferred based on evolving screening criteria.⁷³⁰ More than 1,000 US military personnel were assigned to JTF-160 to stand up and prepare the facility for the arrival of the detainees; the majority were MPs. The first 20 detainees

⁷²⁶ Michael Dunlavey, Official Biography, Erie County Government, Current as of 12 August 2011

⁷²⁷ Dunlavey Interview.

⁷²⁸ Ibid.

⁷²⁹ Ibid.

⁷³⁰ Jim Garamone, U.S. Aircraft Hit 4 Afghan Targets; Guantanamo Work Begins, 'AFPS', 7 January 2002

arrived at Kandahar 11 January 2002.⁷³¹ They were initially housed at Camp X-Ray, the former criminal facility from the 1995 Cuban detainee crisis, but it was a temporary solution while plans for a long-term facility were addressed.⁷³² The holding cells were open air, chain linked 8-by-8-by-7.5-foot units. Detainees were given access to warm showers, toilets, water, clean clothes, blankets, three halal meals per day, prayer rugs, medical care, exercise time, and writing materials.⁷³³ They were also provided with a US Navy Islamic Chaplain who provided a *Quran* for each detainee, performed the calls to prayer, and acted as an ombudsman to the command for the detainees.⁷³⁴

A CT scanner and other high tech medical equipment were shipped to the base. Neurosurgeons, cardiovascular surgeons, and other specialists were flown in to treat detainees. Many were in poor condition and needed hospital care.⁷³⁵ On 17 January the ICRC made their first visit to observe operations and set up oversight.⁷³⁶ Shortly thereafter on 25 January, SECDEF Rumsfeld and select members of Congress visited GTMO to personally thank members of JTF-160 for the work they were doing and remind them that although the detainees did not qualify for POW status under the Geneva Conventions, they were to be afforded good treatment and proper care.⁷³⁷ This status was in line with his 19 January memo to the CJCS defining detainee status for the DOD.⁷³⁸

During this visit, the SECDEF ordered every detainee be screened immediately in order to determine whom the US had in custody, utilise the information for decision-making, and to inform the public. At this point, detainees were arriving at GTMO on

⁷³¹ Garamone, 'Joint Task Force Set Up in Cuba to Oversee Al Qaeda Detainees,' *AFPS*, 11 January 2002

⁷³² Military #22, Author Interview, Draper, UT, 22 July 2009

⁷³³ Garamone, 'Mistreatment Allegations "Just Plain False",' *AFPS*, 22 January 2002

⁷³⁴ Jim Garamone, 'More Detainees Will Move to Gitmo; Actions Continue in Afghanistan,' *AFPS*, 24 January 2002

⁷³⁵ Military #14 and #15 Interviews.

⁷³⁶ Garamone, 'Red Cross to Visit Gitmo; U.S. and Afghan Forces Cooperate,' *AFPS*, 17 January 2011

⁷³⁷ Gerry Gilmore, 'Rumsfeld Visits, Thanks U.S. Troops at Camp X-Ray in Cuba,' *AFPS*, 27 January 2002

⁷³⁸ Donald Rumsfeld, *SECDEF Memo to CJCS Regarding the Status of Taliban and Al Qaeda Detainee*, (Washington DC: DOD, 19 January 2002)

two flights a day from Afghanistan and there were only about 15 interrogators to screen them all. The military interrogators spent 12 hours a day screening detainees in the interrogation booths and then wrote reports for several more hours. This schedule persisted seven days a week for the first few months.⁷³⁹ These ‘re-screenings’ took place despite the fact all of the detainees had been screened in Afghanistan and had spent several months being interrogated and had time to coordinate their stories with each other.⁷⁴⁰

In addition to the lack of HUMINT trained resources, the majority of military interrogators and civilian law enforcement personnel had no training in radical Islamic extremism, languages, religion, or cultures of the detainees. This made screening efforts even more challenging.⁷⁴¹ The JTF J-2 (head intelligence officer) started his own training programme in Islam, history, and culture for J-2 personnel⁷⁴² and Stu Harrington, a former interrogation officer from the Vietnam War, was brought in to provide historical lessons learned.⁷⁴³

Shortly after Rumsfeld’s visit, the JTF-160 J-2, USMC Colonel Ron Bukeima, was informed his operations would become part of the new JTF-170’s focus on intelligence collection. The mission would become more robust and receive the full backing of the SECDEF and a new, long-term facility would be constructed to become the hub for all detainees in the GWOT.⁷⁴⁴

Due to the dearth of adequate language capabilities among the TF personnel, the key resource for the interrogators, analysts, and detention personnel was the large group of civilian contractor linguists assigned to the TF. This group mostly consisted of highly motivated naturalised US citizens who had lived many years in their native

⁷³⁹ Military #4, Author Interview, Lansdowne, VA, 4 February 2009

⁷⁴⁰ Dunlavey Interview.

⁷⁴¹ Ibid.

⁷⁴² Military #4, Author Interview.

⁷⁴³ Dunlavey Interview.

⁷⁴⁴ Military #22, Author Interview.

countries and they were more proficient than any US personnel in the detainees' languages, cultures, and religions. While they lacked the extensive hard-skills: military speciality training of analysis, interrogation, and detention operations, their soft-skills or 'cultural tradecraft' was the key to accomplishing the mission. No success was achieved without them.

Managing linguists to support detention operations was a challenge for JTF-160. Two contracting companies, Titan Corporation and World Wide Language Resources, were awarded contracts to provide linguist support and they did not work well together. In addition, the linguists were from all over the Islamic world and some did not work well together due to cross-cultural jealousies and differences.⁷⁴⁵ They spent a great deal of time together in a large room waiting to assist with detainees.⁷⁴⁶ Most were eager to support the mission and anxious to be selected, but military personnel quickly realised the linguists had not been vetted well by the contracting companies. Their skills and aptitudes varied widely as well as their language capabilities.⁷⁴⁷

A military officer assigned to the TF who spoke Dari and Farsi took it upon himself to organise the contracted linguists and put a system in place that would support both the detention and interrogation missions; he became the first Officer-in-Charge (OIC) of the linguist cell. Some linguists spoke more than one language so the military began their own testing to see what resources had been provided by the contracting companies. After vetting and skill set identification, linguists were taught how to work with interrogators; the training was not very formal initially, but it improved over time.⁷⁴⁸

As linguist operations expanded, the OIC appointed a newly arrived US Army officer, a heritage Arabic speaker and systems designer, to be the Assistant OIC. His

⁷⁴⁵ Military #22 Interview.

⁷⁴⁶ Military #26, Author Interview, Tampa, FL, 1 April 2009

⁷⁴⁷ Military #22 Interview.

⁷⁴⁸ Ibid.

job was to manage relationships between the contracting companies and the linguists themselves. While many were professional and proficient, others were challenging to work with due to cultural gaps, high maintenance attitudes, job qualifications, work ethics, or education level. In some cases, the contracting companies failed to complete the necessary clearance paperwork and sent un-cleared linguists; one linguist contractor site manager was even thrown off the island for lying to the AOIC.⁷⁴⁹

Changes to linguist operations were made including implementing a dress code and improving scheduling coordination with detention operations. Linguists who argued with detainees were trained not to interfere with interrogations and instructed to let the interrogators run the interviews while maintaining a supporting role. The eventual creation of tiger teams or interagency combined teams, helped alleviate doubling of interviews and also strengthened rapport with detainees by synergising linguist, interrogator, analyst, and other agency personnel rather than everyone interviewing the same detainee and asking the same questions without any coordination.⁷⁵⁰

Some linguists worked in the document exploitation cell while waiting for other missions. The few non-heritage speaker military linguists, mostly Arabic speakers, were assigned to this mission to keep them busy because their language capabilities were not strong enough to conduct anything beyond the basic screening of a detainee. A native Arabic linguist could finish in one week a translation assignment that would take three months for a Defence Language Institute (DLI) - Monterey trained linguist to do. Native linguists were also helpful in deciphering detainee dialects and determining their truthfulness. Many detainees lied about their country of origin to their non-native

⁷⁴⁹ Military #26 Interview.

⁷⁵⁰ Ibid.

military screeners and it was sometimes several months before a native linguist would detect the detainee was from another country.⁷⁵¹

Because 22 of the detainees spoke Uygur, it was a challenge to find a proficient translator. Very few Americans speak this language (also known as Xinjiang Uygur) from Islamic East Turkmenistan, and only a handful of Uygurs had US citizenship, which was necessary to obtain a basic security clearance to work at the TF. Eventually one linguist was located in April 2002, and all Uygur detainees were sent to GTMO from Afghanistan.⁷⁵²

Initially, the FBI brought in a behavioural science team with no background in Islamic culture and suggested a white-collar criminal approach rather than one appropriate for hard-core sociopaths.⁷⁵³ They also Mirandized, (the reading of one's legal rights to not answer questions and seek an attorney) detainees until they were ordered to stop.⁷⁵⁴ Additionally, FBI agents and other law enforcement personnel only stayed at GTMO 10 to 14 days then rotated back to the US, which did not give them enough time to familiarise themselves with the detainees' files.

Some agents inserted themselves into military interrogations, which affected the flow and destroyed rapport between military interrogators and the detainees. Others threatened to throw detainees in prison for the rest of their lives if they did not talk before agents had even determined what crimes they were going to be charged with. To alleviate some of the problems, FBI tours were eventually lengthened to 60 days but many agents were inexperienced, ill prepared, and satisfied with superficial interviews.⁷⁵⁵ A 2008 DOJ Office of Inspector General report praised FBI agents for

⁷⁵¹ Military #13, Author Interview, Ashburn, VA, 15 March 2009

⁷⁵² Rushan Abbas Interview, Ashburn, VA, 22 March 2009

⁷⁵³ Dunlavey Interview.

⁷⁵⁴ Soufan, p. 445

⁷⁵⁵ Dunlavey Interview.

their role at GTMO, for complying with FBI policy, and reporting military personnel who violated FBI policy, even when not in violation of military policy.⁷⁵⁶

The FBI's top radical Islamist interrogator, Ali Soufan, made several trips to GTMO early on and like Rumsfeld, stressed the importance of segregating detainees quickly. He wanted to determine which detainees were Al-Qaeda, which were Taliban, and which had been erroneously detained. An important step in positively identifying detainees was matching aliases or *Mujahid kunyas* to real names;⁷⁵⁷ Arab and Islamic name matching was at the core of detainee identification. Soufan prophetically stated:

From here, within Gitmo, we will either win or lose the war. After we interrogate people we need to sort them: who is guilty of crimes and who is innocent. If they're innocent, or if we're not going to be able to prosecute them, then we need to think of their detention here as a rehabilitation period. Otherwise we're creating new enemies. In the process we need to show them what the "real America" is, and leave them with good impressions. And if we fail to process detainees, we'll lower the incentive for other detainees to cooperate, as they'll see cooperation doesn't change their situation. As for the guilty ones, we need to process them and put them on trial. Otherwise we are creating living martyrs.⁷⁵⁸

The FBI treated GTMO as an ideal training ground for personnel with no experience in terror investigations. In reality, agents assigned to the CITF were trying to work as quickly as the interrogators, but the military personnel spent much more time dealing with detainees and actually learning their files. After being tapped to command the new intelligence TF, General Dunlavey met with Acting Commander Major General Ronald Burgess at Southern Command (SOUTHCOM) Headquarters in Miami who was overwhelmed by the unfolding mission. Dunlavey next flew to GTMO to assess Camp X-Ray detention operations and meet with General Lehnert.⁷⁵⁹ As he stepped off

⁷⁵⁶ *A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq, Special Report*, (Washington, DC: OIG-DOJ, May 2008), pp. iv, vi, 27

⁷⁵⁷ Ali Soufan, *The Black Banners: The Inside Story of 9/11 and the War Against al-Qaeda*, (NYC: W. Norton & Company, 2011), pp. 439, 441

⁷⁵⁸ *Ibid*, pp. 446-447

⁷⁵⁹ Dunlavey Interview.

the plane, he was greeted by Lehnert who had arranged a photo opportunity with CNN and other media. Coincidentally, the worst photos to come out of GTMO were DOD media photos. Lehnert's MP advisor, the Provost Marshal from Fort Hood, was competent, but Lehnert didn't utilise him and preferred to run things his own way. Dunlavey also realised there were too few interrogators and none adequately trained to accomplish the mission; conditions were in a state of disarray.⁷⁶⁰

The most discouraging discovery was that General Lehnert was openly thwarting the intelligence collection mission. He dismissed interrogation personnel from the area where new detainees were in-processed. Military interrogation doctrine required intelligence personnel to obtain a sense of the detainee's state of mind during in processing in order to select the appropriate interrogation approach. Although interrogators attempted to explain the policy to Lehnert, he refused to work with them and threatened them with insubordination if they did not vacate the area within 60 seconds.⁷⁶¹

The rift between General Lehnert and the intelligence operation had deteriorated into a power struggle.⁷⁶² In an interview with author and New York University law professor Karen Greenberg, Lehnert said his only mission 'was to detain them and wait for a legal process to begin'.⁷⁶³ During his first visit to GTMO, the SECDEF acknowledged that some good intelligence had come from the detainees⁷⁶⁴ but he needed more actionable intelligence than he was getting from Lehnert's TF.⁷⁶⁵ To increase production, the intelligence collection operation needed more rank and greater support.⁷⁶⁶

⁷⁶⁰ Ibid.

⁷⁶¹ Email to Author, Military #4, 25 January 2009

⁷⁶² Military #24 Interview.

⁷⁶³ Karen J. Greenberg, 'When Gitmo Was (Relatively) Good,' *WP*, 25 January 2009,

⁷⁶⁴ Gilmore

⁷⁶⁵ Greenberg

⁷⁶⁶ Dunlavey Interview.

Dunlavey's final assessment to Rumsfeld was that JTF-160 was running a 'dog and pony show,' and that no intelligence organization wanted to send their personnel to GTMO to be photographed by the media or have the ICRC looking over their shoulders.⁷⁶⁷

On 7 February 2002, 153 detainees were being held at Camp X-Ray,⁷⁶⁸ but just over a week later on 15 February, it reached its maximum capacity of 312 detainees. Prisoner intake via the military airflow from Kandahar halted until the new Camp Delta facility could be completed.⁷⁶⁹

During the lull, General Dunlavey travelled to Afghanistan to address the alarming number of detainees sent to GTMO that had no long-term value to the US.⁷⁷⁰ He met with Colonel Michael Flynn, the J-2 and Director for Intelligence for JTF-180 in Bagram.⁷⁷¹ Colonel Flynn said he was sending detainees to GTMO based on the guidance from CENTCOM, despite other sources that argued they did not meet the screening criteria. The SECDEF wanted only the most hardened Taliban and Al-Qaeda detainees to be sent to GTMO.⁷⁷² Although some were clearly terrorists, others merely had useful information and their dossiers from Afghanistan only included a picture, an ID number, and a short summary of who they were; this was clearly not the detailed analysis required to justify sending them to GTMO.⁷⁷³ Some detainees were simply foreign nationals innocently living in Pakistan, but when the US government began offering bounties, they were captured and turned over to US authorities⁷⁷⁴ for between US\$3,000⁷⁷⁵ and US\$5,000.⁷⁷⁶ Others were Pashtun civilians nabbed by Northern

⁷⁶⁷ Ibid.

⁷⁶⁸ Mackey, *The Interrogators: Inside the Secret War Against Al Qaeda*, p. 158

⁷⁶⁹ Ibid., p. 217

⁷⁷⁰ Dunlavey Interview.

⁷⁷¹ General Michael Flynn, Biography, *NATO*, Current as of 1 August 2011

⁷⁷² Greg Miller, 'Dozens of detainees pose no real threat, but U.S. policies make it nearly impossible to get names off lists. There's also fear of freeing 21st hijacker.' *LA Times*, 22 December 2002

⁷⁷³ Erik Saar and Viveca Novak, *Inside the Wire*, (NYC: The Penguin Press, 2005), pp. 147-149

⁷⁷⁴ Moazzam Begg, *Enemy Combatant*, (London, UK: New Press, 2006), p. 142

⁷⁷⁵ Murat Kurnaz, *Five Years of My Life*, (NYC: Palgrave Macmillan, 2008), p. 47

Alliance Tajiks and turned over to the US for US\$50 a head.⁷⁷⁷ This represented a large sum for many Afghans and Pakistanis and the potential for corruption was high.⁷⁷⁸ Other detainees were refugees returned home to Afghanistan after years of exile due to the various wars and were turned in by local rivals not only for money, but for political reasons.⁷⁷⁹

In December 2002, an analysis of GTMO detainees indicated close to 10% of the detainee population, or 59 detainees, had no intelligence value to the US. These detainees had been recommended for release even before being transferred to GTMO. They were Afghani and Pakistani farmers, taxi drivers, and workers conscripted by the Taliban. Despite Colonel Flynn's assertion the right detainees were transferred, the evidence showed there were:

[F]lawed screening guidelines, policies that made it impossible to take prisoners off Guantanamo flight manifests due to a pervasive fear of letting a valuable prisoner go free. Once they appeared on the manifests, sources said, removing them proved almost impossible. Doing so required senior intelligence officers in Kuwait (CFLCC) or Afghanistan (JTF-180) to work through thickets of military red tape. It also required them to trust the judgment of junior intelligence officers, something they were loath to do given the stakes.⁷⁸⁰

By mid-January 2003, personnel at GTMO deemed almost 100 detainees of no intelligence value to the US and the number was growing.⁷⁸¹

As detention operations unfolded, General Dunlavey was convinced that detainees should stay in facilities in Afghanistan or be released back to the Northern Alliance.⁷⁸² One detainee, nicknamed 'Half Dead Bob', whose skull was partly missing,

⁷⁷⁶ Michael Ratner and Ellen Raye, *Guantanamo: What the World Should Know*, (White River Junction, VT: Chelsea Green, 2004), p. 9

⁷⁷⁷ Soufan, p. 440

⁷⁷⁸ Ratner and Raye, p. 9

⁷⁷⁹ Mahvish Khan, *My Guantanamo Diary*, (NYC: Public Affairs, 2008), p. 19

⁷⁸⁰ Miller, 'Dozens of detainees pose no real threat, but U.S. policies make it nearly impossible to get names off lists. There's also fear of freeing 21st hijacker.'

⁷⁸¹ Saar, pp. 123-124

⁷⁸² Email to Author, General Michael Dunlavey, 11 March 2009

should never have been sent to GTMO;⁷⁸³ after he received extensive medical treatment he thanked General Dunlavey, but warned if he got out he would have to kill him.⁷⁸⁴ Another detainee diagnosed with severe mental illness, who drank shampoo and ate his own excrement, cost the Army US\$50,000, because the ICRC demanded a civilian doctor confirm the Army medical doctor's diagnosis.⁷⁸⁵

Benefits of keeping detainees in Afghanistan included: facility availability, lower transportation costs, fewer arguments over international jurisdiction, and finally, the reality that detention was a CENTCOM mission (not a SOUTHCOM mission). SOUTHCOM, whose area of responsibility (AOR) was the Caribbean and Latin America, lacked the personnel, money, and experience to deal with the CENTCOM mission. Although General Dunlavey argued these points, he was informed that General Franks had ordered the detainees' transferred, the move was final, and he was to do the best job he could.⁷⁸⁶

Challenging living conditions caused tension between soldiers and detainees. General Lehnert insisted his soldiers live in the field with the detainees following the standards set forth by the Geneva Conventions for the detention of armed enemy soldiers. However, those guidelines were for the detention of soldiers caught fighting for their country from nations who had signed the treaty.⁷⁸⁷ But Al-Qaeda was a non state-affiliated terrorist organization and the status of Taliban fighters had not yet been determined. Detainees received medical care, food, shelter, and had been removed to a safe environment away from the battlefield consistent with Common Article 3 of the Geneva Conventions.⁷⁸⁸

⁷⁸³ Military #24 Interview.

⁷⁸⁴ Dunlavey Interview.

⁷⁸⁵ Military #24 Interview.

⁷⁸⁶ Dunlavey Interview.

⁷⁸⁷ The Geneva Conventions of 1949 and their Additional Protocols, Article 25, 12 August 1949

⁷⁸⁸ Geneva Convention (III) relative to the Treatment of Prisoners of War, *ICRC*, 12 August 1949

During his initial assessment, General Dunlavey found US soldiers living in general purpose field tents, eating out of mermite cans, using port-o-potties, drinking warm milk, standing to eat out of mess trays with flies and rats, and living right next to the detainees. The female soldiers referred to the walk to the showers, which were next to a garbage dump below the tents at X-Ray, as the 'walk of shame'.⁷⁸⁹

General Dunlavey proposed moving soldiers to a fully operational regimental barracks, with a mess hall less than three miles away; he argued the soldiers were in garrison and not a tactical field environment, but Lehnert refused. He said his JAG told him the soldiers could not live any better than the detainees; if that were the case then the JTF soldiers should have lived in cages like the detainees. In addition, Lehnert said that for security reasons, they needed to live close by the detention facility. However, none of them even had their weapons as they were locked up in a base armoury; only the guards in the towers had weapons. Lehnert also said he didn't have the financial resources to move the troops, but General Dunlavey looked at the budget and determined they could afford it.⁷⁹⁰

In addition, detainees began resisting imprisonment by throwing human waste from their buckets at the soldiers.⁷⁹¹ Lehnert ordered soldiers to clean the detainee 'crap boxes' daily fearing it was too dangerous for the detainees to dump their own excrement. But having the soldiers carry away detainee waste, the soldiers looked like subordinates.⁷⁹² Lehnert thwarted any attempt by interrogators to establish a superior position over the detainees or to make them dependent on their captors in order to get them to cooperate.⁷⁹³ Morale was low; Dunlavey believed the soldiers needed a change in order to accomplish their mission. He wrote General Spears at SOUTHCOM and

⁷⁸⁹ Dunlavey Interview.

⁷⁹⁰ Ibid.

⁷⁹¹ Military #14 and #15 Interviews.

⁷⁹² Dunlavey Interview.

⁷⁹³ *Field Manual 34-52: Intelligence Interrogation*, (Washington, DC: Department of the Army, 1992), pp. 1-15, 3-2

asked for help. Spears forwarded Dunlavey's complaints to Lehnert, which further enflamed the situation.⁷⁹⁴

The international media reported, often erroneously, on abuse of detainees at GTMO. These articles failed to mention detainee attacks on the TF personnel.⁷⁹⁵ Detainees began a hunger strike at the end of February 2002.⁷⁹⁶ Organised by Shaker Abdel-Rahman Amer, a Saudi-born British resident who spoke fluent English. He was a charismatic leader who bragged about killing and how he wielded his walking cane to maintain discipline in his English neighbourhood.⁷⁹⁷

General Lehnert was concerned over the hunger strike and pleaded with detainees. He went into their cells. At one point Lehnert sat down next to a detainee in a spot where the detainee had dumped urine, much to the chagrin of on-looking detainees; he was completely oblivious.⁷⁹⁸ His demeanor was reminiscent of Brigadier General Francis Dodd, commander of the US prison camp on Kojima Island during the Korean War, who got too close to the prisoners and was captured and held hostage for several weeks.⁷⁹⁹ The non-Arabs lasted about eight hours without food and most of the Arab detainees gave up within 24 to 36 hours. Several interrogators, who used various approaches to create dissent and disunity among the detainees, brought the hunger strike to an end.⁸⁰⁰

When General Lehnert left in March 2002, he told the detainees they would have lawyers within three weeks and hearings within four.⁸⁰¹ Even upon departure he made the difficult intelligence mission even more problematic. In sharp contrast,

⁷⁹⁴ Dunlavey Interview.

⁷⁹⁵ Military #13 Interview.

⁷⁹⁶ Kathleen Rhem, 'Some Al Qaeda, Taliban Detainees Refuse Food,' *AFPS*, 28 February 2002

⁷⁹⁷ Dunlavey Interview.

⁷⁹⁸ Ibid.

⁷⁹⁹ Walter Hermes, *Truce Tent and the Fighting Front*, (Washington, DC: Office of the Chief of Military History, 1966), pp. 243-245

⁸⁰⁰ Email to Author, Military #4, 25 January 2009

⁸⁰¹ Dunlavey Interview.

articles in the media and a 2009 book by Karen Greenberg⁸⁰² praised his command and blamed Dunlavey and his team for things done wrong at GTMO.⁸⁰³ No one did more harm to the intelligence mission at GTMO than General Lehnert.⁸⁰⁴

When Lehnert's Marines returned to Camp LeJeune, North Carolina, they were replaced by a 200-man TF from the 1st Battalion, 22nd Infantry Regiment from Fort Hood, Texas. Their mission was to provide all external security at Camp X-Ray and eventually Camp Delta. They acted as a quick reaction force (QRF) supporting MPs 'inside the wire'. When detainees arrived at GTMO, the TF secured the airfield and assisted with detainee transport to Camp X-Ray.⁸⁰⁵

Brigadier General Rick Baccus, Commander of the 43rd MP Brigade, Rhode Island National Guard replaced Lehnert and served from 28 March 2002⁸⁰⁶ to 9 October 2002.⁸⁰⁷ When General Baccus arrived, Dunlavey hoped for a fresh start, but Baccus refused to meet with him regularly, and after the first couple of weeks, he stayed in his office issuing orders seemingly unaware of what was going on in camp. He stopped coming to the daily 4:00 PM briefing. He sent his lieutenant aid in his stead; at one point, General Baccus stopped signing orders and official paperwork all together and had his chief of staff sign for him.⁸⁰⁸

Baccus had only one year of experience in the MP corps and relied heavily on his reserve Lieutenant Colonel JAG officer Tom Berg, who was a civilian public defender. Berg advised Baccus to use the procedures in the Geneva Conventions, despite the Bush Administration's refusal to classify detainees as POWs because treatment of enemy combatants (ECs) was yet to be defined. Berg's goal was to run

⁸⁰² Karen J. Greenberg, 'When Gitmo Was (Relatively) Good,' *WP*, 25 January 2009

⁸⁰³ Greenberg, *The Least Worst Place: Guantanamo's First 100 Days*

⁸⁰⁴ Military #4, Author Interview, Lansdowne, VA, 4 February 2009.

⁸⁰⁵ LTC Brian Reed, USA, *Interview by Operational Leadership Experiences Project Team with Combat Studies Institute*, 26 October 2005. Fort Leavenworth, Kansas. [Digital recording stored on CD-ROM at Combined Arms Research Library, Fort Leavenworth, Kansas.]

⁸⁰⁶ General Rick Baccus, Official Biography, Army National Guard, January 2003

⁸⁰⁷ Author Unknown, 'Too nice' Guantanamo chief sacked,' *BBC*, 16 October 2002

⁸⁰⁸ Dunlavey Interview.

Camp X-Ray just like a POW camp and insisted detention soldiers lived next to the detainees. Detainee cells were open wire mesh and much more comfortable than the stifling tents where the troops slept. Berg approved of X-Ray's open site plan; he felt it led to transparency,⁸⁰⁹ but it also made it very difficult to collect intelligence.

Dunlavey continued to approach Baccus to persuade him of the importance of synchronizing the detention and interrogation missions to achieve unity of effort. Baccus refused and continued his predecessor's policy of giving favours to detainees and circumventing the interrogators' ability to control the granting of additional comfort items based on cooperation.⁸¹⁰

Baccus was finally relieved of duty and sent home. He was demoted to the rank of colonel and quietly retired in December 2002 after an Ohio MP unit mutinied over poor living conditions and a review found he openly thwarted interrogation operations.⁸¹¹ His Rhode Island Commanding Officer, Major General Reginald Centracchio, said Baccus' actions culminated in a complete loss of 'trust and confidence in him as a commander'.⁸¹² Despite the loss of rank, removal from his position, and forced retirement, he was awarded the Defence Superior Service Medal for his service at GTMO, given a good officer evaluation, and his TF was awarded the Joint Meritorious Unit Award for a period inclusive of seven of the nine months he was in command.⁸¹³

HDC Phase III: Detainee Operations Improve as Corrections Are Made

True to the HDC, the Joint Staff at the Pentagon quickly realised X-Ray was a temporary solution.⁸¹⁴ In early 2002, SOUTHCOM put forth a plan to construct a long-term detention facility at GTMO to house 2,000 detainees. The SECDEF rejected the

⁸⁰⁹ Thomas Berg, 'Frontline Interview,' *PBS*, 18 July 2005

⁸¹⁰ Dunlavey Interview.

⁸¹¹ Dunlavey Interview.

⁸¹² Author Unknown, 'Too nice Guantanamo chief sacked'

⁸¹³ Rick Baccus, Frontline Interview, *PBS*, 27 August 2005

⁸¹⁴ Kirk Lippold, Author Interview, Crystal City, VA, 29 September 2009

plan on the grounds it was too large; he feared if the facility was that large, the system would find a way to fill it. He did not want to be the world's jailer. Rumsfeld envisioned a small facility in hopes it would compel commanders to release those who should not be held. Once the SECDEF approved plans for a scaled back 400-prisoner facility, CENTCOM was finally able to hand off the detention burden to SOUTHCOM.⁸¹⁵ In hindsight, this proved to be a grave error, because it removed CENTCOM's detainees from their control and their mission.

The new Camp Delta was situated on a grassy field overlooking the best beach on the island.⁸¹⁶ Built by KBR-Haliburton, it was modelled after a prison they had built in the Persian Gulf. When General Dunlavey saw the construction plans, he immediately sensed it would impede intelligence collection. The mesh screen cells would promote good air circulation, but also allow the detainees to talk to each other, which would harm the intelligence collection mission. The facility was constructed of pre-fabricated shipping containers assembled on the island.⁸¹⁷ On 28 and 29 April, all detainees from Camp X-Ray were moved to the four sub-camps⁸¹⁸ of Camp Delta.⁸¹⁹

The infantry TF provided all the security for the detainee movement from X-Ray to Camp Delta. They worked closely with KBR in the building of the facility and coordinated the movement plan. Once detainees were moved to Delta, the QRF mission ended for the infantry TF and was assumed by MPs who worked 'inside the wire'. They also turned over security responsibilities to a new unit, the 2nd Battalion of the 142nd Infantry from the Texas National Guard.⁸²⁰

In hopes of reducing the detainee population, General Dunlavey tried to have many of them released, but was unsuccessful for several reasons: CITF and the FBI

⁸¹⁵ Feith, *War and Decision*, p. 160

⁸¹⁶ Military #14 and #15 Interviews.

⁸¹⁷ Dunlavey Interview.

⁸¹⁸ Gordon Cucullu, *Inside GTMO*, (NYC: Harper Collins Publishers, 2009), p. 43

⁸¹⁹ Rudi Williams, 'GITMO General Rates Force Protection High With Detainee Care,' AFPS, 21 June 2002

⁸²⁰ Reed Interview.

hoped to use some as witnesses in future trials,⁸²¹ Under-Secretary of Defence for Policy Douglas Feith refused to allow it,⁸²² the ICRC demanded assurances they would not be tortured if they were sent home,⁸²³ some homelands refused to accept them,⁸²⁴ and finally, no one wanted to release a detainee who might return to the fight.⁸²⁵

In Afghanistan, some detainees who met the same profile as those who had been sent to GTMO were being released. Rear Admiral John D. Stufflebeem, Joint Staff Deputy Director of Operations for Current Readiness and Capabilities said: 'We're not collecting every former Taliban, especially mid-level or lower-level people. We're interested in the leadership'.⁸²⁶ But there was a disconnect between who was sent to GTMO and who was released in the field; even the SECDEF conceded some detainees had been picked up erroneously.⁸²⁷

As Camp Delta filled up through the summer of 2002,⁸²⁸ the detention and intelligence collection mission continued to evolve in support of the intelligence community and the war fighters on the ground in Afghanistan. While standard interrogation techniques from *FM 34-52* were adequate for most of the detainees, others resisted relinquishing information. (Appendix I)

Bin Laden hand-selected Saudi Muhamed Mani[a] Ahmad al-Qahtani (Detainee 63),⁸²⁹ to participate in the 9/11 operation.⁸³⁰ On 4 August 2001, Detainee 63 attempted to enter the US at the Orlando, Florida airport on a one-way ticket with only US\$2,800 on hand.⁸³¹ He could provide no details on his destination in the US and became hostile during a 90-minute interview with US immigration officials. They put him on a return

⁸²¹ Dunlavey Interview.

⁸²² Phillippe Sands, *Torture Team*, (NYC: Palgrave Macmillan, 2008), p. 43

⁸²³ Rick Baccus, 'Frontline Interview,' *PBS*, 27 August 2005

⁸²⁴ Murat Kurnaz, *Five Years of My Life*, (NYC: Palgrave Macmillan, 2008), pp. 16, 234

⁸²⁵ Military #12, Author Interview, Tampa, FL, 1 April 2009

⁸²⁶ Gerry Gilmore, 'Remanded Detainees not "High Value," DoD Officials Say,' *AFPS*, 11 February 2002

⁸²⁷ Joseph Margulies, *Guantanamo and the Abuse of Presidential Power*, (NYC: Simon & Schuster, 2007), p. 65

⁸²⁸ Williams, 'GITMO General Rates Force Protection High With Detainee Care'

⁸²⁹ *The 9/11 Commission Report*, (NYC: W.W. Norton and Company, 2004), p. 525

⁸³⁰ *Ibid.*, p. 235

⁸³¹ Cucullu, pp. 17, 19

Virgin Atlantic flight to London. His parting words were ‘I’ll be back’.⁸³² Video surveillance showed Muhamed Atta, the 9/11 ringleader, waited outside the airport for him.⁸³³ Ultimately Detainee 63 was captured fleeing Tora Bora and transferred to GTMO. In July 2002, his fingerprints were matched to his interview in Orlando. On 8 August, he was moved to the Navy Brig⁸³⁴ on base where the CITF including FBI⁸³⁵ agents had a month to interrogate him using standard law enforcement techniques; it went nowhere.⁸³⁶ Having determined Detainee 63 was not the twentieth hijacker the FBI turned him over to the military for further interrogation.⁸³⁷ However, in his 2011 book, FBI Agent Ali Soufan, Detainee 63’s initial interrogator, indicated he had ascertained he was, indeed, the twentieth hijacker.⁸³⁸ Not even the FBI was sure who he was.

Detainee 63’s experience instigated a major discussion in the interrogation methods debate juxtaposing law enforcement agency (LEA) techniques (as part of the CITF for prosecution and trials) and military intelligence collection methods (to support the war effort).⁸³⁹ After a discussion with CIA agents who described their success with additional techniques newly authorised for the CIA that went beyond *FM 34-52*,⁸⁴⁰ General Dunlavey asked the J-2, Lieutenant Colonel Jerry Phifer, for a list of techniques to be legally reviewed by the JTF-170 JAG Lieutenant Colonel Dianne Beaver to be further reviewed at DOD.⁸⁴¹

Dunlavey was reticent to move in the direction of harsher interrogation methods since his philosophy was based on elicitation through rapport building.⁸⁴² He had used

⁸³² Adam Zagorin, Michael Duffy, ‘Detainee 63 – Inside the Wire at GITMO’, *Time*, June 20, 2005, p. 29

⁸³³ *Ibid.*, p. 30

⁸³⁴ Cucullu, p. 33

⁸³⁵ Sands, p. 44

⁸³⁶ Zagorin and Duffy, pp. 29-30

⁸³⁷ Dunlavey Interview.

⁸³⁸ Soufan, p. 460

⁸³⁹ *Ibid.*, p. 442

⁸⁴⁰ Dunlavey Interview.

⁸⁴¹ Sands, pp. 63, 65

⁸⁴² Dunlavey Interview.

this approach successfully in Vietnam and repeatedly stressed to General Baccus that rapport building would bring results.⁸⁴³ However, in the post 9/11 environment, Dunlavey was willing to explore additional methods if they were deemed legal and necessary on select, hard-core resistant detainees.⁸⁴⁴ Chris Hogan, who developed non-*FM 34-52* interrogation techniques and authored *The Interrogators*, served in Afghanistan at the time detainees were being sent to GTMO. He explained:

The American army intelligence collection and techniques for human sources were ineffective . . . They were really designed for a scenario on the central German plain to capture prisoners who were going to behave in a manner consistent with the Geneva Convention. The kind of incentives, and indeed, disincentives that we had at our disposal were wholly inadequate to persuade steeled, ideological fighters to give up information that would be detrimental to their cause. Those techniques and tactics evolved and evolved to a certain extent, in - during my tenure - to try to become more effective. Some of the techniques [sleep deprivation] that - bore the most - fruit during the time that we were there, involved variations on themes that were part of our training.⁸⁴⁵

On 2 October 2002, a strategy meeting was held at GTMO of key players involved with interrogation operations to discuss the pros and cons of various techniques. Members of the Behavioural Science Consultative Team (BSCT) also participated to provide their clinical observations regarding detainee behaviour.⁸⁴⁶ The discussion included the legality and effectiveness of psychological stressors such as sleep deprivation, loss of time, loss of food and isolation, dealing with the ICRC, what the CIA had been doing, and how effective the tactics were.⁸⁴⁷ Over several days a list

⁸⁴³ Baccus, 'Frontline Interview'

⁸⁴⁴ Dunlavey Interview.

⁸⁴⁵ Chris (Mackey) Hogan, 'Frontline Interview,' *PBS*, 28 July 2006

⁸⁴⁶ *Article (AR) 15-6 GTMO Investigation, Sworn Statement of redacted Army officer*, 11 January 2005, Leonard Wood Army Community Hospital, MO

⁸⁴⁷ 'Counter Resistance Strategy Meeting Minutes,' *JTF-170*, 2 October 2002

of requested counter resistance techniques was drawn up in a request memorandum dated 11 October 2002 and signed by the J-2 at GTMO.⁸⁴⁸

Lieutenant Colonel Diane Beaver, the JTF JAG, provided an initial legal review of the requested techniques.⁸⁴⁹ Her conclusion was to allow them only after additional review from higher authorities and training of military personnel on how to use the techniques.⁸⁵⁰ She was given four days to provide a full legal review of the requested techniques which would be a monumental shift in the way the US military conducted interrogations. She asked for help from the SOUTHCOM JAG, the DIA, the JCS JAG, and the Army JAG School, but was left to herself to provide the advice to her commanding officer.⁸⁵¹ Beaver did not have access to the 1 August 2002 memorandum from the DOJ office of Legal Counsel for the CIA, which dealt with the same issues.⁸⁵² On 11 October, General Dunlavey signed the request letter for the techniques review and sent it to SOUTHCOM.⁸⁵³

On 25 October, Commanding Officer General James Hill signed it, citing the need to give interrogators all the tools needed.⁸⁵⁴ The new techniques greatly disturbed CITF Deputy Commander Mark Fallon, who represented the law enforcement school of thought, saw the minutes from the GTMO strategy meeting and was concerned about the legality of the techniques. He was also worried about how the new techniques

⁸⁴⁸ LTC Jerry Phifer, Director, J-2, JTF-170, *Memo for Commander JTF-170 Regarding Request for Approval of Proposed Counter-Resistance Strategies*, (Guantanamo Bay, Cuba: JTF-170, 11 October 2002)

⁸⁴⁹ LTC Diane E. Beaver, Staff Judge Advocate, JTF-170, *Memo for Commander JTF-170 Regarding Legal Review of Aggressive Interrogation Techniques*, (Guantanamo Bay, Cuba: JTF-170, 11 October 2002)

⁸⁵⁰ LTC Diane E. Beaver, Staff Judge Advocate, JTF-170, *Memo for Commander JTF-170 Regarding Legal Brief on Proposed Counter-Resistance Strategies*, (Guantanamo Bay, Cuba: JTF-170, 11 October 2002)

⁸⁵¹ Sand, pp. 65, 227

⁸⁵² Jay Bybee, Office of the Assistant Attorney General, Office of Legal Counsel, DOJ, US DOJ, *Memo for John Rizzo Acting General Counsel for the Central Intelligence Agency*, (Washington, DC: DOJ, 1 August 2002)

⁸⁵³ General Michael Dunlavey, Commander JTF-170, *Memo for Commander US Southcom Regarding Counter-Resistance Strategies*, (Guantanamo Bay, Cuba: JTF-170, 11 October 2002)

⁸⁵⁴ General James Hill, Commander, US Southcom, *Memo for the Chairman of the Joint Chiefs of Staff, Regarding Counter-Resistance Strategies*, (Miami, FL: Southcom, 25 October 2002)

would affect future military tribunals, and he warned: ‘someone needs to be considering how history will look back at this’.⁸⁵⁵

As the anniversary of 9/11 approached, troubling events increased the urgency of obtaining information from Al-Qaeda operatives, including: the December anthrax attacks in the US, the December attempt by ‘Shoe Bomber’ Richard Reid to blow up an American Airlines Flight, and the deadly spring and summer attacks in Tunisia and Pakistan. In October 2002, Al-Qaeda leader Ayman Al-Zawahiri released a tape promising to attack the US again. In September and October, the FBI broke up the Al-Qaeda linked Lackawana Six cell in New York. On 6 October, Al-Qaeda attacked a French oil tanker off the coast of Yemen. On 8 October, an Al-Qaeda gunman killed a US Marine in Kuwait. On 12 October, Al-Qaeda affiliated Jemayeh Islamiya bombed a nightclub in Indonesia killing more than 200 and injuring 300. On 28 November, Al-Qaeda fired two anti-aircraft missiles at a plane in Kenya and suicide bombers attacked a hotel in Kenya which killed 15 and injured 40. On 30 December, three US citizens were killed in Yemen during an attack on Baptist Missionary Hospital.⁸⁵⁶ Under these environmental imperatives, the new interrogation techniques were requested.

In addition, GTMO Interrogation Control Element (ICE) Chief David Becker said the ‘aggressive interrogation techniques were a direct result of the pressure we felt from Washington to obtain intelligence and the lack of policy guidance being issued by Washington’.⁸⁵⁷ Paul Rester, who eventually became the ICE Chief, warned that the mere perception of doing anything aggressive would prove to be a challenge for the US especially once the detainees were released.⁸⁵⁸

HDC Phase III: Detainee Operations Improve as Corrections Are Made

⁸⁵⁵ Mark Fallon, CITF Deputy Commander, Email to Sam McCahon, 28 October 2002

⁸⁵⁶ Author Unknown, ‘Guantanamo Provides Valuable Intelligence Information,’ *DOD-Office of the Assistant Secretary of Defense for Public Affairs*, 12 June 2005

⁸⁵⁷ Sands, p. 61

⁸⁵⁸ Paul Rester, Author Interview, Crystal City, VA, 27 February 2009

The first major move to correct much of the organizational dysfunction at GTMO took place on 11 October 2002; under orders from SOUTHCOM General Hill, General Dunlavey dissolved JTF-160 and 170 and became the first commander of the newly established JTF-GTMO. He had fought hard to unify the commands and get the missions on the same track, but on 4 November he would be gone.⁸⁵⁹ His effort to consolidate the missions during the tough start-up phase would pay dividends for the next commander. Now it was unified with two major lines of operation, the Joint Detainee Operations Group (JDOG) and the Joint Intelligence group (JIG).⁸⁶⁰ Both groups, led by colonels, reported to one general officer; now unity of effort was needed.

On 4 November 2002, the Pentagon brought in a new leader to foster unity of effort in the new JTF. General Geoffrey Miller, an artillery officer and close friend of General Hill, was tasked to put the command and control structure together and put procedures and policies in place to instil discipline, order, and efficiency.⁸⁶¹ For Miller, the mission was personal. He had lost several friends at the Pentagon on 9/11. This was his chance to have an impact on the war effort.⁸⁶² One of his first orders was to solidify the SOPs for the TF and by the following spring he had the foundation and framework in place.⁸⁶³

Another immediate benefit of merging the two TFs was money; previously, intelligence-focussed JTF-170 had plenty of funding, while detention-centred JTF-160 had very little money. Miller immediately addressed problems with TF personnel housing, office space, and vehicle allocation; these issues had been a problem since day

⁸⁵⁹ Dunlavey Interview.

⁸⁶⁰ Saar, P. 30

⁸⁶¹ Michelle Shephard, *Guantanamo's Child: The Untold Story of Omar Khadr*, (Mississauga, Canada: John Wiley & Sons, 2008), p. 108

⁸⁶² James Yee, *For God and Country: Faith and Patriotism Under Fire*, (NYC: Public Affairs, 2005), p. 125

⁸⁶³ MG Geoffrey Miller, *Camp Delta Standard Operating Procedures*, (Guantanamo Bay, Cuba: 28 March 2003)

one of the mission. Miller's goal was to decrease the friction between the detention and intelligence operations and get everyone working as a team.⁸⁶⁴

General Dunlavey and his staff prepared a full briefing on the detention operations for General Miller as part of the standard handover-takeover (HOTO), relief in place-transfer of authority (RIP/TOA) that units normally do as part of a change of command, but Miller said it was unnecessary and he knew what he had to do and refused to see the brief.⁸⁶⁵ Dunlavey was also supposed to have briefed the SECDEF on his time at GTMO as he left command, but was kept away from Rumsfeld and returned to the NSA. In May 2003, Dunlavey was assigned to the newly created Terrorism Threat Integration Center (TTIC) as the Associate Director for Homeland Security. In April 2004, he retired and returned to Pennsylvania to resume his job as a judge.⁸⁶⁶ Years later, General Dunlavey ran into the SECDEF in Washington DC who asked why he never outbriefed him after he left GTMO; Dunlavey stated he did not know why they never had their meeting.⁸⁶⁷ Somebody did not want him talking to the SECDEF.

Shortly after General Miller took command, he authorised Detainee 63's interrogation over the objections of the FBI, who felt the DOD plan was too aggressive.⁸⁶⁸ This is not surprising since the FBI was squarely in the judicial-Geneva Conventions camp. FBI agents at GTMO received a full legal analysis from FBI legal counsel at headquarters stating that most of the techniques the DOD proposed violated the Constitution and US laws against torture.⁸⁶⁹ Despite those protests, on 23 November 2002, Detainee 63 was moved from Camp Delta to Camp X-Ray to await

⁸⁶⁴ Military #7, Author Interview, FortFort Walton Beach, FL, 23 March 2009

⁸⁶⁵ Dunlavey Interview.

⁸⁶⁶ Major General Michael Dunlavey, Biography, Global Intelligence Forum, 2011

⁸⁶⁷ Dunlavey Interview.

⁸⁶⁸ OIG Report, *A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq, Special Report*, (Washington, DC: DOJ, May 2008)

⁸⁶⁹ Marion Bowman, Legal Counsel, *FBI Legal Analysis of Proposed Interrogation Tactics at GTMO*, (Washington, DC: FBI, 27 November 2002)

interrogation.⁸⁷⁰ On 27 November, DOD General Counsel William Haynes sent a memorandum to the SECDEF requesting the new techniques be authorised at GTMO.⁸⁷¹ On 2 December, Rumsfeld approved the requested techniques allowing interrogators to move beyond the standard *FM 34-52* interrogation approaches. In June 2005, a government source leaked news of Detainee 63's interrogation to *Time* magazine.⁸⁷² The inside source was most likely from the CITF or the FBI.

Detainee 63 initially provided a weak cover story, but finally admitted he had been sent to the US by Khalid Sheikh Mohammed (KSM). He told interrogators he had met Bin Laden several times, trained at two Al-Qaeda camps, and had contact with senior Al-Qaeda leaders. He provided intelligence regarding the recruitment of Al-Qaeda operatives and logistics, provided information on the 9/11 attacks, explained (Dirty Bomber) Jose Padilla's and (Shoe Bomber) Richard Reid's connections to Al-Qaeda, provided infiltration routes and methods used by Al-Qaeda to cross international borders undetected, explained how Bin Laden escaped US forces in Afghanistan, gave detailed information about 30 of Bin Laden's bodyguards in custody, and provided other (still classified) information.⁸⁷³

In May, the new ICE Chief, Lieutenant Colonel Ted Moss, sent a memorandum to General Miller stating Detainee 63 had been fully exploited and was no longer needed at GTMO for questioning.⁸⁷⁴ He continued cooperating until October 2005 when he received an attorney; he recanted everything he previously said despite KSM's confirmation of his role in the 9/11 operation.⁸⁷⁵ Thus the greatest fears of the intelligence-collection school of thought played out like a textbook.

⁸⁷⁰ Saar, p. 146

⁸⁷¹ William Haynes, General Counsel, Office of the Secretary of Defense, *Action Memo for the Secretary of Defense Regarding Counter-Resistance Techniques*, (Washington DC: DOD, 27 November 2002)

⁸⁷² Zagorin and Duffy, pp. 26-33

⁸⁷³ Author Unknown, 'Guantanamo Provides Valuable Intelligence Information,' *DOD-Office of the Assistant Secretary of Defense for Public Affairs*, 12 June 2005

⁸⁷⁴ OIG Report, p. 120

⁸⁷⁵ Cucullu, pp. 37-38

In 2009, Susan Crawford, the convening authority for military commissions for GTMO, said Detainee 63 was supposed to be a 9/11 hijacker, but the interrogation techniques applied to him, despite the SECDEF's approval, constituted torture in the manner and combination they were applied. He will never be tried in a US criminal court and will likely never be released;⁸⁷⁶ indefinite detention without trial is a choice the US may have to make with other detainees.⁸⁷⁷ Susan makes the argument for the need for the hybrid school of thought to create a special National Security Court to try just such an individual.

Paul Rester, who followed Moss as the ICE Chief, disagreed with Crawford's analysis. In regard to FBI emails protesting the interrogation of Detainee 63 he told Michigan Senator Carl Levin:

Senator, they're hysterical hyperbole. Sir, nobody hurt that boy. Nobody physically or mentally hurt that boy. But I will tell you this. If he'd succeeded in his mission, if he had not been turned away by an underpaid GS-11 civil servant INS [immigration] inspector in Orlando, Florida he would have hooked up with Mohammad Atta, he would have strapped an airplane to his ass, he would have flown it into the US Capitol, and you and I, sir, would not be having this conversation.⁸⁷⁸

According to Rester, the anti-GTMO crowd 'turn[ed] the villains into victims, and the victims into villains. It's Alice in Wonderland. It's all on its head.'⁸⁷⁹

USAF Lieutenant General Randall Schmidt, the senior investigating officer for abuse at GTMO made a statement supporting the intelligence collection school-of-thought when he said, 'the long interrogations and other techniques used [on 63] were not violations of DoD policy in themselves but that the cumulative effect was

⁸⁷⁶ Bob Woodward, 'Guantanamo Detainee Was Tortured, Says Official Overseeing Military Trials,' *WP*, 14 January 2009

⁸⁷⁷ Charles Stimson, Author Interview, Washington, DC, 17 February 2009

⁸⁷⁸ Rester Interview.

⁸⁷⁹ *Ibid.*

“degrading and abuse” . . . I do not, however, consider this treatment to have crossed the threshold of being inhumane’.⁸⁸⁰

Despite these conflicts, GTMO operations continued to produce valuable intelligence for GWOT operations. In an 8 January 2003 interview with *ABC*, General Miller, maintained the information provided by Detainee 63 was ‘particularly valuable when pieced together with information collected elsewhere.’⁸⁸¹ Despite these good reports from the GTMO JTF, critics from the judicial-Geneva Conventions school of thought continued to state claims of good Intel coming from GTMO were false. To the public who did not have access to the actual classified information like General Miller, it was hard to see the evidence to support the intelligence-collection school of thought.

In December 2002, per Lieutenant Colonel Beaver’s guidance, Lieutenant Colonel Ted Moss assembled the SOP for the new techniques approved by the SECDEF based on training at the Navy Survive, Evade, Resist, Escape (SERE) School in Brunswick, Maine.⁸⁸² Two SERE instructors came to GTMO to train interrogators from 31 December to 2 January 2003.⁸⁸³ In Washington, a storm of controversy was erupting over the SECDEF’s 2 December authorisation; on 15 January 2003, Rumsfeld’s legal counsel advised him to rescind his 2 December approval for the techniques.⁸⁸⁴ The interrogation of Detainee 63 stopped. The SECDEF also established a working group to discuss the techniques and recommend a way forward.⁸⁸⁵ On 4 April, the working group made their report⁸⁸⁶ and on 16 April the SECDEF approved their recommendations for

⁸⁸⁰ Kathleen Rhem, ‘Alleged Guantanamo Abuse Did Not Rise to Level of “Inhumane”,’ *AFPS*, 13 July 2005

⁸⁸¹ Kathleen Rhem, ‘Intel of Enormous Value Gleaned From Guantanamo,’ *AFPS*, 10 January 2003

⁸⁸² Ted Moss, *JTF GTMO ‘SERE’ Interrogation Standard Operating Procedure*, December 10, 2002

⁸⁸³ John Rankin and Christopher Ross, *After Action Report Joint Task Force Guantanamo Bay (JTF-GTMO) Training Evolution*, 15 January 2003

⁸⁸⁴ Donald Rumsfeld, Secretary of Defense, *Memo for Commander USSOUTHCOM Regarding Counter Resistance Techniques*, (Washington DC: DOD, 15 January 2003)

⁸⁸⁵ Donald Rumsfeld, Secretary of Defense, *Memo for the General Counsel for the Department of Defense, Regarding Detainee Interrogations*, (Washington DC: DOD, 15 January 2003)

⁸⁸⁶ *Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations*, (Washington DC: DOD, 4 April 2003)

detainees at GTMO.⁸⁸⁷ Deep within the pentagon the two ideological camps were deeply divided and all tried their best to sway the SECDEF to their side.

This approval allowed the second special interrogation to move forward. Mohamedou Ould Slahi (Detainee 760) was a senior Al-Qaeda operative believed to have recruited several of the 9/11 hijackers. After his arrest in Mauritania, he was brought to GTMO in August 2002 and interrogated by the FBI through May 2003. When they finished, the military created a 90-day special interrogation programme for him, which began 1 July. Prior to the plan's approval, military interrogators threatened Detainee 760 with the arrest of his mother, his family, and implied they could suffer beatings, physical pain, be imprisoned in GTMO, or simply disappear.⁸⁸⁸ Had he been classified as an enemy prisoner of war (EPW), this would have violated *FM 34-52* guidelines, but the new environment with the EC classification and the SECDEF's new guidance left room for interpretation.⁸⁸⁹

The programme involved hooding and moving Detainee 760 around the base to induce confusion about where he was and potentially resorted to more of the techniques approved by the SECDEF.⁸⁹⁰ Rumsfeld approved the plan on 13 August,⁸⁹¹ but by 8 September he was so compliant they used only the direct approach.⁸⁹² The Schmidt-Furlow investigation concluded the elements of the special interrogation plan were never employed because of Detainee 760's cooperation.⁸⁹³ The military interrogation of Detainee 760 illustrated the stark differences between military techniques and LEA approaches, which were governed by the necessity of collecting admissible evidence to

⁸⁸⁷ Donald Rumsfeld, Secretary of Defense, *Memorandum for Commander US Southcom Command Regarding Counter Resistance Techniques*, (Washington DC: DOD, 16 April 2003)

⁸⁸⁸ OIG Report, p. 123

⁸⁸⁹ *Field Manual 34-52: Intelligence Interrogation*, (Washington, DC: Department of the Army, 1992), p. 3-16

⁸⁹⁰ OIG Report, p. 122

⁸⁹¹ Ibid., p. 123

⁸⁹² Ibid., p. 124

⁸⁹³ Ibid.

be used in military tribunals.⁸⁹⁴ Since Detainee 760, there are no open source reports indicating the military has received authorisation for any special interrogation plans using techniques beyond those in the DOD interrogation field manual.

General Miller instituted a system to reward detainee cooperation and good behaviour.⁸⁹⁵ Level one detainees were the most compliant; they wore white jumpsuits and received more comfort items. Level four detainees were the most defiant and wore orange jumpsuits and were denied basic comfort items. Level five detainees were of interest to the intelligence mission, and were housed in a separate block.⁸⁹⁶ As part of the level system, the new Camp Four was opened 28 February 2003 to house the most complaint detainees. The new camp was designed as a dormitory-style facility with ten detainees in each room. Detainees were given an hour each day for free time in a recreation area.⁸⁹⁷

Camp Iguana was created at the end of March 2003 to house a new class of detainees, Juvenile Enemy Combatants (JECs). Three JECs arrived from Afghanistan and were kept separate from the older detainees. They had more freedom than the other detainees and even had a VCR to watch approved movies. Despite their age, they were still considered dangerous because of their involvement in operations against coalition forces.⁸⁹⁸ Army Colonel Larry James, a psychologist from Walter Reed Army Medical Centre, created a plan to care for and interrogate the JECs.⁸⁹⁹

By 9 May 2003, GTMO reached its high water mark of 681 detainees in custody. (Appendix J) While many more arrived, others were released. The large build-up of detainees frustrated the SECDEF who was alarmed by the growing number in detention. He wanted some detainees released immediately and tasked his legal

⁸⁹⁴ Ibid., p. 125

⁸⁹⁵ Ratner and Raye, pp. 147-148

⁸⁹⁶ Laurel Fletcher and Eric Stover, *The Guantanamo Effect: Exposing the Consequences of U.S. Detention and Interrogation Practices*, (Berkley, CA: University of California Press, 2009), p. 43

⁸⁹⁷ Yee, p. 91

⁸⁹⁸ Ibid., pp. 93-95

⁸⁹⁹ Larry C. James, *Fixing Hell: An Army Psychologist Confronts Abu Ghraib*, (NYC: 2008), pp. 34-48

counsel and intelligence policy advisor to move quickly on the issue.⁹⁰⁰ As Clausewitz taught, in war time friction is everywhere and what should have been an easy directive from the SECDEF to send home detainees that no longer needed to be there was proving difficult even for him.

At GTMO, day-to-day operations were busy but synchronised. The schedule kept by the guards and intelligence personnel became routine but was always stressful given the stakes. In addition, some detainees attempted extreme measures including hunger strikes and suicide.⁹⁰¹

On 22 May 2003, Military Commission Order #1⁹⁰² was issued and the Pentagon announced the assignment of two military lawyers to oversee the military commissions for detainees at GTMO. Army Colonel Frederic Borch was named Acting Chief Prosecutor; his office prosecuted individuals in violation of the laws of war and terrorism. USAF Colonel Will Gunn was named Acting Chief Defence Counsel, and pledged to ensure detainees brought before the military commission had ‘zealous representation by defense counsel; either military or civilian’.⁹⁰³ Many detainees were encouraged by the announcement and the prospect of review and release.

John Bellinger, former legal advisor to the Secretary of State, said the commissions were the appropriate place to try terrorists captured in the GWOT because prior to 9/11, US law did not address the legal status of terror suspects captured in Afghanistan. He also said that GTMO detainees did not have *habeas corpus* rights and thus, could not be denied them. He stated: ‘No individual in any military conflict in American military history has ever had the right to habeas corpus before’ but said they would receive an independent court’s review to determine if they are properly held,

⁹⁰⁰ Donald Rumsfeld, Secretary of Defense, Memo to Jim Haynes and Doug Feith, *Detainees*, 11 April 2003

⁹⁰¹ Yee, pp. 91, 100

⁹⁰² Donald Rumsfeld, Secretary of Defense, Military Commission Order #1, 21 March 2002

⁹⁰³ Doug Sample, ‘Military Commission Chief Prosecutor, Defense Counsel Introduced,’ *AFPS*, 23 May 2003

which is, in essence, like unto a *habeas* review.⁹⁰⁴ The US Supreme Court later ruled against this argument and for the first time in US history granted military combatants *habeas* reviews in US civilian courts. (Appendix K)

A group of senior Al-Qaeda detainees not likely to ever be released arrived at GTMO 24 September 2003 in CIA custody. Abu Zubaydah, Abd al-Nashiri, Ramzi Binalshibh, and Mustafa al-Hawsawi had all undergone CIA interrogation and were turned over to the military for detention. GTMO was the optimal choice because the facility was preparing for military commissions. These detainees were housed at a separate CIA location at GTMO known as Camp Seven which was also referred to as Camp No and Strawberry Fields. They were only there a brief period when the Supreme Court decided to open the US courts to detainees. On 27 March 2004, the HVDs were transferred to other CIA black sites.⁹⁰⁵ In September 2006, they returned to GTMO after President Bush announced the transfer of 14 HVDs from the CIA detention programme to GTMO to stand trial.⁹⁰⁶ The 15th HVD, Abd al Hadi al Iraqi, arrived in April 2007,⁹⁰⁷ and the 16th and final HVD, Muhammad Rahim, arrived in March 2008.⁹⁰⁸

While Miller made the needed structural and procedural changes to the TF, the DOD reiterated guidance that ‘low level enemy combatants who represent only a tactical force protection threat are not eligible for movement to [GTMO]’.⁹⁰⁹ The Assistant SECDEF for Special Operations and Low Intensity Conflict (SOLIC), Thomas O’Connell cautioned:

⁹⁰⁴ Gerry Gilmore, ‘State Department Official Explains Military Commissions,’ *AFPS*, 19 October 2006

⁹⁰⁵ Author Unknown, ‘Guantanamo used earlier than disclosed,’ *Concord Monitor*, 6 August 2010

⁹⁰⁶ Author Unknown, ‘Bush acknowledges secret CIA prisons - President also pushes legislation to try detainees sent to Guantanamo,’ *AP*, 6 September 2006

⁹⁰⁷ Author Unknown, ‘Pentagon: Top al Qaeda leader taken to Guantanamo,’ *CNN*, 27 April 2007

⁹⁰⁸ Jim Garamone, ‘Defense Department Takes Custody of High-Value Al Qaeda Operative,’ *AFPS*, 14 March 2008

⁹⁰⁹ Thomas O’Connell, Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, *Action Memo for the Secretary of Defense on Global Screening Criteria for Detainees*, (Washington DC: DOD, 20 February 2004), p. cover page

The availability of DOD detention facilities at Guantanamo Bay, or elsewhere, shall not be a determining factor in whether a Combatant Commander detains or obtains control over an individual. The detainee facilities at Guantanamo Bay, Cuba, function as a strategic intelligence gathering centre and should be used for detaining those Enemy Combatants who meet the stated criteria, and are of high operational or strategic intelligence or law enforcement value, and not those low level Enemy Combatants who pose only a tactical force protection threat.⁹¹⁰

This was the same guidance that had been put out by the Pentagon in early 2002 yet Colonel Flynn's team on the ground in Kuwait reviewed detainee files for transfer to GTMO felt many of the low level detainees should be sent to GTMO despite the guidance.

During Miller's tenure, the counterintelligence (CI) climate deteriorated in the already high pressure-working environment. Several CI investigations against Muslim US servicemen suspected of supporting detainees were driven by JDOG intelligence officer, Captain Jason Orlich. Ultimately, no espionage conspiracy was found, but minor charges were filed against a few of the servicemen. The alleged ringleader, Army Chaplain James Yee, was fully exonerated by General Hill at SOUTHCOM at the end of the investigation.⁹¹¹

One of the most important actions taken to assist with the HDC phase three and corrections to the entire US global detention system was the creation of the Office of the Deputy Assistant Secretary of Defence for Detainee Affairs. Detention issues in Iraq affected the entire US detention programme. Revelations of detainee abuse at Abu Ghraib first reported to the DOD in January 2004⁹¹² burgeoned into 12 formal

⁹¹⁰ Ibid., p. 3

⁹¹¹ Yee, pp. 118, 127, 128, 129, 131, 134, 137, 138, 204, 215

⁹¹² Christopher Graveline and Michael Clemens, *The Secrets of Abu Gharaib Revealed: American Soldiers on Trial*, (Dulles, VA: Potomac Books, 2010), p. 225

investigations that delved into every faucet of US detention operations.⁹¹³ (Appendix L)

After the media broke the story, the SECDEF tapped Secretary of the Army Pete Geren and DIA Director General Michael Maples to lead a TF to update him twice a day on anything related to the emerging Iraq detention crisis including Abu Ghraib, congress, public relations, policy, or investigations. Eventually the Geren-Maples TF was replaced by the weekly Joint Detainee Coordinating Committee (JDCC) meeting.⁹¹⁴

A key recommendation from the major investigations was the creation of a single point of focus at the DOD for detainee issues; until that point, different offices throughout the DOD owned various aspects of detention operations. The DASD for SOLIC, Paul Butler, became increasingly more involved because of the trust the SECDEF had in him.⁹¹⁵ On 13 February 2004, a Pentagon press article referred to Butler as the DASD for Detainee Operations.⁹¹⁶ He became the spokesman to describe evolving detainee policy and he spent more and more of his time on the issue until it became clear a permanent solution was needed.⁹¹⁷

Mathew Waxman, a young former Supreme Court clerk and NSC staffer familiar with the GTMO debate, had spent a few months working on justice reforms and detainee issues in Iraq. He was part of the team investigating options for the future of detention policy and determining what apparatus within the DOD should support it. One option was the development of a temporary TF rather than a permanent organization that would draw detailees from various DOD entities relevant to detention policy. Another option was the creation of a new DASD office.⁹¹⁸ The DASD was a mid-level position and the lowest level of senior management that interacted with

⁹¹³ Sara Wood, 'Detainee Abuse Investigation Report Released,' *AFPS*, 17 June 2006

⁹¹⁴ Stimson Interview.

⁹¹⁵ *Ibid.*

⁹¹⁶ K. L. Vantran, 'Panel to Review Guantanamo Detainees,' *AFPS*, 13 February 2004

⁹¹⁷ Dobie McArthur, Author Interview, Crystal City, VA, 15 December 2010

⁹¹⁸ Mathew Waxman, Author Interview, NYC, 24 February 2009

Combatant Commanders (COCOMs) and other agencies on a regular basis, whereas the Assistant Secretaries of Defence (ASDs) managed other DASDs.⁹¹⁹

One factor that made the creation of a new DASD most attractive was the hope it could eventually be phased out. A special TF was a temporary 90-day organisation used to manage and implement recommendations that dissolved when the period expired. An office was more permanent but could still be folded at some point in the future when it was no longer needed.⁹²⁰ Rumsfeld favoured the DASD route and began seeking an appointee.

The first member of the (yet to be officially announced) office was Alan Liotta, appointed on 16 February 2004 as the civilian principal deputy; he would be a constant in the office as the presidentially appointed DASDs came and went.⁹²¹ The Senior Advisor for Detainee and Prisoner Issues to the Coalition Provisional Authority (CPA) in Baghdad, Dobie McArthur, was first offered the position.⁹²² An Arabic speaker, Oxford and Naval Academy graduate, and former active duty Marine, McArthur had been sent to Baghdad by Deputy Secretary of Defence Paul Wolfowitz to assist the CPA. He was deeply involved in detainee affairs even before the Abu Ghraib scandal broke in the news. He was offered the position while still in Baghdad in June 2004, but he declined because of his lack of legal training.⁹²³

On 16 July 2004, Undersecretary of Defence for Policy Ryan Henry formally announced the creation of the DASD for Detainee Affairs office and stated the head would report directly to him. There would be no ASD intermediary between him and the new DASD which was unique in the OSD command and control structure and showed the importance the DOD placed on the growing detainee policy issues. Part of

⁹¹⁹ Phil Carter, Author Interview, Rosslyn, VA, 31 October 2011

⁹²⁰ Waxman Interview.

⁹²¹ Alan Liotta, Biography, Current as of 18 January 2011

⁹²² Dobie McArthur, Senior Advisor for Detainee and Prisoner Issues, *Information Memo: SUBJ. - Analysis of Detention Operations to the Administrator [Paul Bremer]*, 22 March 2004, Coalition Provincial Authority (CPA) – Baghdad, Iraq

⁹²³ McArthur Interview.

the job was to interface with the ICRC, but in the past, ICRC reports were dealt with in the field. The DASD chaired a joint committee composed of the Undersecretary for Intelligence and representatives from the Joint Staff, the Office of General Counsel, the Department of the Army, and others involved in detainee affairs. They would review ICRC reports and advise the SECDEF on their findings.⁹²⁴

After McArthur turned it down, Waxman was offered the job and in August 2004 he became the First Deputy Assistant Secretary of Defence for Detainee Affairs, only the 12th DASD in the DOD, a significant position for a 32 year old;⁹²⁵ he accepted. This new office would play a critical role in ensuring all of the needed corrections in the HDC phase three were actually carried out. He built his staff borrowing people from organizations inside the Pentagon and others.⁹²⁶ The office consisted of two deputies who covered the ICRC and Capitol Hill, two deputies over Iraq, another over Afghanistan, a special projects staffer, and two DASD secretaries. Most positions were funded with temporary money so they could be eliminated quickly. Staffers were like contractors; there was no health care compensation or benefits, only salary.⁹²⁷ The new office eventually grew to about 20 people even though most DASD offices employed only four or five.⁹²⁸ The size of the office was a testimony to the relevance of detention policy.

Over the course of his tenure as the DASD, Waxman's office was overwhelmed with two main tasks: to develop detention policy and to undertake the historical reviews and investigations. In the wake of Abu Ghraib, the first priority was to improve care in custody and minimise the likelihood of abuse recurring. Waxman and his military counterpart, Director of the Joint Staff's Detainee Affairs Division General

⁹²⁴ Samantha Quigley, 'DoD Creates Office of Detainee Affairs,' 16 July 2004, AFPS, Accessed 21 November 2010

⁹²⁵ Stimson Interview.

⁹²⁶ Waxman Interview.

⁹²⁷ Stimson Interview.

⁹²⁸ Waxman Interview.

Robert Caslen, ran the Defence Strategic Leadership Oversight Committee (DSLOC) to implement necessary detention reforms from training, facilities, doctrine, to policy issues.⁹²⁹ Few committee members had any real experience with detention or interrogation policy and operations.⁹³⁰

The 12 post-Abu Ghraib investigations by the DOD ultimately provided 492 line item recommendations;⁹³¹ more than 1,700 people were interviewed and at least 16,000 pages of information were reviewed.⁹³² Waxman and Caslen created a matrix of the recommendations and prioritised them. On a quarterly basis, representatives from each of the services and the Combatant Commands met to discuss implementation of the reforms. Some were implemented immediately, others not at all, others were rolled into other recommendations, and the DASD office came up with some of their own.⁹³³ The matrix was colour-coded; red meant ‘recommendation’, yellow meant ‘in progress’, and green meant ‘implement’.⁹³⁴ Three people signed off on a recommendation before it was marked green; Waxman signed on behalf of the Office of the Secretary of Defence (OSD), General Caslen signed for the Joint Staff, and Major General Donald Ryder, the Army Provost Martial General (PMG), signed for the Army as the DOD detention executive agent. Occasionally, the White House objected to one of the recommendations because it required a re-examination of the 2001 and 2002 legal determinations regarding the Geneva Conventions.⁹³⁵

In August 2005, Waxman, who felt the media rarely portrayed detention in a positive light, spoke to the *Washington Post* about the continued necessity of detention and historical precedent the US and coalition followed in holding enemy combatants for the duration of the conflict. He also described the progress made in US detention

⁹²⁹ Ibid.

⁹³⁰ Contractor #2, Author Interview, Washington, DC, 21 September 09

⁹³¹ Stimson Interview.

⁹³² Author Unknown, ‘U.S. Military Continues to Improve Detainee Handling,’ AFPS, 10 March 2005

⁹³³ Waxman Interview.

⁹³⁴ Stimson Interview.

⁹³⁵ Waxman Interview.

policy. He disclosed an agreement with the Afghan government to accept their GTMO detainees for repatriation and discussed the institution of detainee review boards that had released more than 250 prisoners. Waxman said calculated releases were worth the risk to illustrate that the US did not want to hold anyone unnecessarily because of the cost of holding detainees in a long war against Al-Qaeda.

Waxman did his best to undo many of the mistakes made during the HDC phase two and detainee releases, part of HDC phase four, were a crucial component of getting it right. As partner countries shared the security burden with the US, more detainees could be released. Waxman said countries willing to take back detainees needed to show they had risk mitigation policies in place to prevent transferred combatants from returning to the battlefield; they also had to make assurances to treat detainees humanely. The US indicated it would assist partner countries that requested help to develop the legal and physical apparatus to contain terrorist threats.⁹³⁶ Partnering with other foreign countries was crucial because the detainee problem was a shared problem not just a US problem.

Despite this progress, Waxman clashed repeatedly with Undersecretary of Defence for Intelligence Policy Stephen A. Cambone and William Haynes the DOD general counsel. The disagreement that led to his resignation was with the Vice President's counsel, David Addington, over language from the Geneva Conventions 'barring cruel, humiliating, and degrading treatment'.⁹³⁷ Waxman felt the standard set in Common Article 3 of the Geneva Conventions should be applied to all US detainees, and Addington disagreed;⁹³⁸ Waxman stepped down to take a new position at the State Department in December 2005.

On 24 March 2004, General Jay Hood, an artillery officer with strong leadership and operational experience, became the longest serving commander at JTF-GTMO and

⁹³⁶ Mathew Waxman, 'Beyond Guantanamo,' *WP*, 20 August 2005

⁹³⁷ Eric Schmitt, 'Pentagon Expert on Detainees Plans to Leave for State Dept.,' *NYT*, 11 December 2005

⁹³⁸ Stimson Interview.

would see most of the major corrections made during HDC phase three implemented. He assumed command just before news of the Abu Ghraib scandal broke and led the camp during the various detention investigations and while the recommendations were implemented.⁹³⁹

His mantra was to make sure no detainees died on his watch and his goal was to run a humane facility that continued to provide actionable intelligence.⁹⁴⁰ Under General Hood, the detention mission took precedence over intelligence collection. His JDOG Commander, Colonel Michael Baumgartner, dealt directly with detainee representatives and granted privileges that normally only an interrogator could authorise as an incentive for cooperation. Baumgartner wanted peace with the detainees, not information⁹⁴¹ pitting him squarely against the intelligence-collection camp.

General Hood had a reputation for being a micromanager who wanted things done his way.⁹⁴² Despite this, morale among interrogators and analysts was high because the mission was still yielding actionable intelligence. Roughly 30 analysts and interrogators (military and civilian contractors) continued working 14-hour days. As he solidified his command, Hood favoured the JDOG (judicial-Geneva Conventions camp) over the JIG (intelligence-collection camp) and did little to alleviate friction between the two groups.⁹⁴³ Delegations continued to visit the camp; Congressional groups toured regularly and every Wednesday was media and VIP day. Members of the media often commented on how nice the facilities were for the detainees.⁹⁴⁴

After the Abu Gharib scandal became public, everyone at GTMO was on edge. In an attempt to be proactive, General Hood ordered several changes: first, an officer of the rank of O-4 or higher and a senior NCO was present in the camp at all times. This

⁹³⁹ Jolene Staker, 'BG Hood Assumes Command of JTF Guantanamo,' *Inside the Wire*, Vol. 4, Issue 28

⁹⁴⁰ Cuucullu, p. 48

⁹⁴¹ Ibid, p. 52

⁹⁴² Military #23, Author Interview, Virginia Beach, VA, 27 January 2009

⁹⁴³ Military #9, Author Interview, Virginia Beach, VA, 7 March 2009

⁹⁴⁴ Military #23 Interview.

was not the case when the abuse took place at Abu Gharib.⁹⁴⁵ Second, he ordered the JIG to rewrite the detention interrogations SOP and incorporated many changes that were eventually included in the official DOD interrogation manual update; it took three months to re-write.⁹⁴⁶

One of the most important HDC phase three corrections was set up during General Hoods tenure; detainees began to have their individual cases reviewed and the HDC phase four releases picked up rapidly. Detainees, who often understood the process better than their interrogators, hoped for an opportunity to plead their case and go home.⁹⁴⁷ On 11 May 2004, the Deputy Secretary of Defense created the Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC) to conduct yearly administrative review boards (ARBs) at GTMO. Although the OARDEC was not under Hood's command, he dealt daily with its impact on both the detention and intelligence collection missions. The Secretary of the Navy was designated to determine whether a detainee would be released, be transferred, or continue to be held based on recommendations from the OARDEC.⁹⁴⁸ Rear Admiral James McGarrah, a Naval Academy graduate and engineering reserve officer,⁹⁴⁹ was put in charge of establishing the office and overseeing the ARBs.⁹⁵⁰ While he may have been a good general officer, his lack of legal background surely did nothing to bring confidence to those who wanted to see a fair process instituted.

On 28 June 2004, several US Supreme Court rulings were handed down which affected the detention review process. In the case of *Hamdi v. Rumsfeld*, the court ruled the US had the right to detain enemy combatants, but if they were US citizens, they would be granted access to the US justice system. Hamdi, who was born in the US

⁹⁴⁵ Cuucullu, p. 91

⁹⁴⁶ Military #2, Author Interview, Virginia Beach, VA, 7 and 8 February 2009

⁹⁴⁷ Military #23 Interview.

⁹⁴⁸ Nat Moger, 'OARDEC conducts ARBs and CSRTs,' *JTF Guantanamo Public Affairs*, 6 June 2008

⁹⁴⁹ Admiral James M. McGarrah, Official Navy Biography, 31 October 2005

⁹⁵⁰ *Statement Of Rear Admiral James M. Mcgarrah Director Of The Office Of The Administrative Review Of The Detention Of Enemy Combatants (OARDEC), Before The Committee On The Judiciary United States Senate*, 14 July 2005, Washington, DC

while his father was in graduate school, was given access to the US courts.⁹⁵¹ On the same day, the high court ruled in the consolidated cases of *Rasul v. Bush* and *al Odah v. Rumsfeld*, that the US government had the right to detain US and foreign citizens in the GWOT, but determined that the US had enough sovereignty over GTMO to grant that the ‘courts have jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad in connection with hostilities and incarcerated at Guantanamo Bay’.⁹⁵²

In response to the rulings, Deputy Secretary of Defence Paul Wolfowitz signed Authorisation for the Combatant Status Review Tribunals (CSRT) on 7 July 2004. Within ten days, all detainees were notified of their opportunity to challenge their status as an enemy combatant and assigned a personal representative to assist them in reviewing all non-classified information provided by the DOD. Within 30 days, personal representatives were to review all the information before a tribunal to determine the detainees’ status as an enemy combatant. Detainees were allowed to present evidence and call available witnesses. If a detainee’s challenge to his enemy combatant status was successful, the DOD notified the State Department of the status change and arranged repatriation.⁹⁵³ The CSRTs were based on the Article 5 principles in the Geneva Conventions and Army Regulation 190-8. They went beyond the ruling in *Hamdi v. Bush* by requiring the assignment of a personal representative.⁹⁵⁴

In early August 2004, the first 150 detainees opened cases under the CSRT process;⁹⁵⁵ the CSRT was a one time review to ensure each detainee was classified correctly as an enemy combatant. In October, the first ARBs began.⁹⁵⁶ In November, before the reviews were even completed, ten former detainees had already

⁹⁵¹ *Hamdi et al. v. Rumsfeld*, Secretary Of Defense, *et al.* (Washington, DC: SCOTUS, 28 June 2004)

⁹⁵² *Rasul et al. v. Bush*, President Of United States, *et al.*, (Washington, DC: SCOTUS, 28 June 2004)

⁹⁵³ Paul Wolfowitz, Deputy Secretary of Defense, *Memo for the Secretary of the Navy – Order Establishing Combatant Status Review Tribunal*, (Washington DC: DOD, 7 July 2004)

⁹⁵⁴ Kyndra Rotunda, *Honor Bound: Inside the Guantanamo Trials*, (Durham, NC: Carolina Academic Press, 2008), p. 133

⁹⁵⁵ Kathleen Rhem, ‘Status-Review Tribunals Under Way at Guantanamo,’ *AFPS*, 13 August 2004

⁹⁵⁶ Rhem, ‘Annual Reviews of Detainee Cases to Begin at Guantanamo,’ *AFPS*, 1 October 2004

re-joined the fighting; it was just as many had feared⁹⁵⁷ In the intelligence-collection school of thought. On 29 March 2005, 10 months after starting the CSRTs, the DOD announced their completion; 520 detainees were confirmed as enemy combatants while 38 were cleared for immediate release,⁹⁵⁸ thus enabling the HDC phase four process. Also in March, Admiral Church's detention investigation was released and found 'the extremely low rate of abuse at GTMO is largely due to strong command oversight, effective leadership, and adequate training on detainee handling and treatment'.⁹⁵⁹

Defence lawyers from the judicial-Geneva Conventions camp were granted access to GTMO detainees in 2004.⁹⁶⁰ Some of the foremost attorneys in the US became involved; they referred to themselves as members of the 'Guantanamo Bay Bar Association'.⁹⁶¹ More than 400 lawyers from at least 50 US firms agreed to do *pro bono* work for the detainees.⁹⁶² Many were driven by their disdain for Bush policies and felt the detainees should have access to the US judicial system.⁹⁶³ Other lawyers were appointed by the US military including Lieutenant Colonel Yvonne Bradley, who represented Binyam Al-Mohammad. Even among members of the military defence counsel, there were those with ideological hostilities. Bradley was accused of propagating lies about torture at GTMO in the press.⁹⁶⁴ She complained that her client was abused. Others said detainees were denied basic medical care, interrogated at gunpoint, and frequently prevented from praying.⁹⁶⁵

These accusations by the judicial-Geneva Conventions camp were untruths and easily proved by a visit to GTMO but the damage of putting out false information into the public domain was already done once printed. On 1 May 2005, *Newsweek*

⁹⁵⁷ Samantha Quigley, 'Former Detainees Released by U.S. Rejoining Fight,' *AFPS*, 3 November 2004

⁹⁵⁸ Kathleen Rhem, '38 Guantanamo Detainees to Be Freed After Tribunals,' *AFPS*, 30 March 2005

⁹⁵⁹ Donald Rumsfeld, *Known and Unknown*, (NYC: Penguin Group, 2011), p. 581

⁹⁶⁰ Denbeaux, p. 55

⁹⁶¹ Mark Denbeaux (ed.), Jonathan Hafetz, (ed.), *The Guantanamo Lawyers: Inside a Prison, Outside the Law*, (NYC: NYU Press, 2009), p. 23

⁹⁶² Debra Burlingame and Thomas Joscelyn, 'Gitmo's Indefensible Lawyers,' *WSJ*, 15 March 2010

⁹⁶³ Denbeaux and Hafetz, p. 4

⁹⁶⁴ Paul Rester, Author Interview, Crystal City, VA, 27 February 2009

⁹⁶⁵ Marc Falkoff (ed.), *Poems from Guantanamo*, (Iowa City, IA: Iowa City Press, 2007), p. 1

erroneously reported that US investigators had confirmed that an interrogator deliberately flushed a *Quran* down a toilet at GTMO. The issue created a violent backlash across the Islamic world; at least 16 people died and more than a hundred were injured. Eventually *Newsweek* retracted the story, but the damage had been done.⁹⁶⁶ Lies in this game with radical extremists have deadly consequences as the *Newsweek* story showed.

In addition to their families and counsel, some detainees had other advocates. In England, a play was produced depicting the plight of the British detainees.⁹⁶⁷ The TF received tens of thousands of pieces of mail for the detainees including fan mail. During the holidays, Americans sent Christmas and Easter greetings.⁹⁶⁸ The detainees' most vocal advocate was Andy Worthington, a British human rights activist, who took up their cases. Worthington despised the Bush Administration for preventing detainees from being tried in US criminal courts and objected to the US declaration of war; he felt alleged terrorists should have been dealt with through the US legal system. For years, he collected articles about the detainees and derided US detention policy.⁹⁶⁹

In March 2006, Worthington began writing a book telling the detainees' stories just as thousands of documents were released through the FOIA process requested by the *Associated Press*. He spent 14 months compiling the data and created a detainee website, which at the time was the most comprehensive public resource compiled on the detainees. He was invited to visit GTMO as a blogger, but declined unless he was allowed to speak to the detainees;⁹⁷⁰ he has no first hand knowledge only what he has heard from others.

Conversely, American researcher Thomas Joscelyn, clearly in the intelligence-collection camp, examined the same documents and completed a comprehensive

⁹⁶⁶ Howard Kurtz, 'Newsweek Retracts Guantanamo Story,' *Washington Post*, 16 May 2005

⁹⁶⁷ Victoria Brittain, Gillian Slovo, *Guantanamo*, (London, UK: Oberon Books, 2008), p. 5

⁹⁶⁸ Culcullu, pp. 208-209

⁹⁶⁹ Andy Worthington, Author Interview, London, UK, 28 October 2009

⁹⁷⁰ Ibid.

analysis of the data. His findings indicated that comparatively few detainees were innocent. He criticised US press organisations for ignoring the value of intelligence produced by interrogations at GTMO and pointed to the media's bias in highlighting every instance of alleged abuse. Jocelyn authored numerous articles defending the detention of enemy combatants at GTMO and exposed millions of dollars of pro bono work being done for detainees by US law firms.⁹⁷¹

In addition to CSRTs and ARBs were military commissions. On 18 August 2004, the DOD stated that 15 GTMO detainees had been designated for military commissions;⁹⁷² Yemenis Salim Ahmed Hamdan and Ali Hamza Ahmad Sulayman Al-Bahlul, Australian David Hicks, and Sudanese Ibrahim Ahmed Mahmoud Al-Qosi were the first four to be charged.⁹⁷³ On 23 August, the first military commissions started,⁹⁷⁴ but the US federal court halted the process on 8 November. Judge James Robertson of the US District Court in Washington, DC stated the 'government overstepped its bounds and violated the Geneva Conventions in trying Salim Ahmed Hamdan in a military commission. The judge's ruling said the government should try Hamdan in a military court-martial'.⁹⁷⁵ On 15 July 2005, the US Court of Appeals for the District of Columbia Circuit Court overturned the order to halt the commissions⁹⁷⁶ and in August the DOD announced changes to the commission process in response to legal criticism.⁹⁷⁷ Again the friction of the two ideological camps in the detention debate is evident in every decision. Rather than create a win-win in a new national security court system, there is a constant back and forth both sides looking for a zero-sum win.

In an attempt to clarify the ambiguous environment for military personnel involved in interrogations, Senator John McCain of Arizona authored the Detainee

⁹⁷¹ Thomas Joscelyn, Author Interview, NYC, 24 February 2009

⁹⁷² Kathleen Rhem, 'Military Commissions to Begin at Guantanamo,' *AFPS*, 18 August 2004

⁹⁷³ Kathleen Rhem, 'Officials Announce Changes to Military Commissions Procedures,' *AFPS*, 31 August 2005

⁹⁷⁴ Jim Garamone, 'Guantanamo Commissions Exceed International Standards,' *AFPS*, 26 August 2004

⁹⁷⁵ Rhem, 'Government to Appeal Ruling That Halts Guantanamo Proceeding,' *AFPS*, 9 November 2004

⁹⁷⁶ Rhem, 'Officer Describes Military Commissions Procedures,' *AFPS*, 19 July 2005

⁹⁷⁷ Rhem, 'Government to Appeal Ruling That Halts Guantanamo Proceeding.'

Treatment Act (DTA) of 2005 elucidating rules for those involved in detention operations.⁹⁷⁸ The DTA stated that *FM 34-52* was the standard for all DOD interrogations, even at GTMO, and that federal courts did not have jurisdiction to hear *habeas* petitions from GTMO detainees.⁹⁷⁹ On 12 June 2008, the US Supreme Court ultimately struck down parts of the DTA in *Boumediene v Bush*. The ruling gave the courts jurisdiction over detainee *habeas* petitions and challenged the constitutionality of the 2006 Military Commissions Act.⁹⁸⁰

On 22 March 2005, a new lessons-learned unit at GTMO was tasked to codify best practices,⁹⁸¹ and on 3 November, the DOD issued Directive 3115.09, ‘DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning’ to consolidate and clarify rules for military personnel working in detention operations. Specifically, it stated that all detainees were to be treated humanely and ordered medical personnel to immediately report any signs of abuse. It authorised behavioral science consultants to assess detainees in lawful interrogations, but not to provide medical care.⁹⁸²

Admiral Harry Harris, a combat veteran, Naval aviator, and experienced commanding officer,⁹⁸³ was the first Naval officer to command JTF-GTMO;⁹⁸⁴ he came at a time when operations were running smoothly, detainee tensions were high, and a new Camp Five for hard-core detainees was created.⁹⁸⁵ His philosophy was that prisons were for rehabilitation and punishment but GTMO’s purpose was to keep enemy

⁹⁷⁸ Margulies, p. 241

⁹⁷⁹ Detainee Treatment Act of 2005 - Amendment 1977 of the Defense Appropriations Bill for 2005 (H.R.2863)

⁹⁸⁰ Steven Myers, ‘Bush Decides to Keep Guantánamo Open,’ *NYT*, 21 October 2008

⁹⁸¹ Kathleen Rhem, ‘Military Police Unit Stands Up at Guantanamo Bay,’ *AFPS*, 22 March 2005

⁹⁸² DoD Directive 3115.09, *DoD Intelligence Interrogation, Detainee Debriefings and Tactical Questioning*, (Washington DC: DOD, 3 November 2005)

⁹⁸³ Admiral Harry B. Harris, Official Navy Biography, Jr. Current as of 5 September 2010

⁹⁸⁴ Carol Rosenberg, ‘New Commander: We Need Guantanamo - and facilities like it,’ *Miami Herald*, 28 May 2006

⁹⁸⁵ Margulies, p. 243

combatants off the battlefield.⁹⁸⁶ His leadership style was diametrically opposed to his predecessor General Hood. He trusted his subordinates and believed in delegation.⁹⁸⁷

Under Admiral Harris, top-level medical treatment continued to be provided to the detainees further taking the wind out of the sails of critics who said the detainees were being mistreated. Harris extended the policy of force-feeding detainees on hunger strikes so they would not die.⁹⁸⁸ The US went to extraordinary measures, beyond the standards set in the Geneva Conventions, to ensure excellent health care for the detainees. One detainee needed an electrocardiogram; the procedure showed a blockage in his heart. Pursuant to the Geneva Convention standard of equal treatment for detainees and soldiers, the detainee required a cardiac catheterization and a stint placed in his heart; top DOD cardiologists agreed.⁹⁸⁹

The DOD located two, state of the art, mobile cardiac catheterization labs but they were too large to fit on the largest military aircraft. At great expense to the US government, a lab was loaded on a barge at an east coast port and sailed down to GTMO at a high rate of speed because GTMO officials were worried about the detainee dying. Then the DOD found one of the top cardiac catheterization doctors in the US, one qualified to operate on the president if he was at the Bethesda Naval hospital; he was taken to GTMO. The mobile lab remained at GTMO because it was too costly to move back to the US.⁹⁹⁰

On 6 June 2006, the DOD reiterated the responsibility of health care professionals to treat detainees in US custody properly according to DoD Instruction 2310.08, the *Medical Program Support for Detainee Operations*.⁹⁹¹ The document

⁹⁸⁶ Cucullu, p. 7

⁹⁸⁷ Ibid., p. 103

⁹⁸⁸ Tim Golden, 'Military Taking a Tougher Line With Detainees,' *NYT*, 10 December 2006

⁹⁸⁹ Stimson Interview.

⁹⁹⁰ Ibid.

⁹⁹¹ DoD Instruction 2310.08E, *Medical Program Support for Detainee Operations*, (Washington DC: DOD, 6 June 2006)

consolidated all detainee medical policy guidance into one place. Dr. William Winkenwerder, ASD for Health Affairs said:

It is a comprehensive, thoughtful policy document that's reaffirming high ethical principles and humane care and treatment for detainees and persons under the authority and control of the U.S. armed forces . . . This instruction doesn't change any of the current practices at Guantanamo Bay, Cuba, or other places where the U.S. deals with detainees, but is a compilation of various policy memoranda . . . The instruction reaffirms principles that will be prevalent for years to come, and it gives a single source of reference for military medical personnel who rotate in and out of places like Guantanamo.⁹⁹²

Pressure to close GTMO began to mount during Admiral Harris's tenure. The *Associated Press* requested the names of detainees under the FOIA. On 3 March 2006, the DOD released the names of 317 detainees,⁹⁹³ officially confirming many of the 551 names illegally disclosed by Navy Lieutenant Commander Matt Diaz in January 2005, for which he was convicted, imprisoned,⁹⁹⁴ and ultimately disbarred.⁹⁹⁵ In an attempt to improve transparency, the Bush Administration authorised the release of 759 current and former GTMO detainee names.⁹⁹⁶

On 15 February 2006, the UN issued a report claiming GTMO detainees had been subject to abuse, excessive violence, insufficient health care, illegal detention, and violations of the right to freedom of religion.⁹⁹⁷ Public pressure to close the facility mounted. In May 2006, President Bush told a German television station he would like to close the facility, but needed to wait for a Supreme Court ruling to decide what kind of trials the detainees would have, a civil or military trial.⁹⁹⁸ A month later the Supreme

⁹⁹² Sara Wood, 'DoD Instruction Consolidates Detainee Medical Care Policy,' *AFPS*, 7 June 2006

⁹⁹³ Jim Garamone, 'Litigation Forces DoD to Release Names of Some Gitmo Detainees,' *AFPS*, 3 March 2006

⁹⁹⁴ Tim Golden, 'Naming Names at Gitmo,' *NYT*, 21 October 2007

⁹⁹⁵ Debra Cassens Weiss, 'Ex-Navy Lawyer Is Disbarred for Sending Secret Names of Gitmo Detainees to Legal Group,' *ABA Journal*, 26 November 2012

⁹⁹⁶ Kathleen Rhem, 'DoD Releases Names of 759 Current, Former Guantanamo Detainees,' *AFPS*, 15 May 2006

⁹⁹⁷ *Situation of detainees at Guantánamo Bay*, UN, 15 February 2006

⁹⁹⁸ Melissa McNamara, 'Bush Says He Wants To Close Guantanamo,' *CBS*, 8 May 2006

Court ruled in *Hamdan v. Rumsfeld* that the that the previous military tribunals violated the Geneva Conventions and the Uniform Code of Military Justice and could not go forward unless they were revamped with the help of the Congress.⁹⁹⁹

The Bush Administration did agree with the high court that the Common Article 3 provisions of the Geneva Conventions should be applied to all US detainees.¹⁰⁰⁰ Deputy Secretary of Defence Gordon England released statements assuring the DOD would comply immediately.¹⁰⁰¹ Specifics of the new directives were formalised on 5 September with the publication of DOD Directive 2310.01E, the Department of Defence Detainee Programme.¹⁰⁰²

On 19 May 2006, ten detainees attacked the guards in the minimum security Camp Four.¹⁰⁰³ The prisoners claimed fighting broke out after a *Quran* was torn and thrown on the ground during a room search. An Emergency Reaction Force (ERF) moved in and used rubber bullets and tear gas to regain control. The detainees pulled a ceiling fan apart and used the sharpened blades to attack and wires to strangle the guards. No guards or detainees were killed but soldiers were wounded. Camp Four was completely evacuated¹⁰⁰⁴ and communal detainee living was suspended.¹⁰⁰⁵ In June 2006, Camp Four was re-opened for the most compliant detainees and operated like a Geneva Convention style camp. Camps One, Two, and Three were shuttered due to corrosion and decay.¹⁰⁰⁶

⁹⁹⁹ Donna Miles, 'Officials Study Implications of Supreme Court Ruling on Tribunals,' *AFPS*, 29 June 2006

¹⁰⁰⁰ Rupert Cornwell, 'Bush concedes that Geneva Conventions apply in Guantanamo prisoners,' *The Independent*, 12 July 2006

¹⁰⁰¹ Donna Miles, 'England Memo Underscores Policy on Humane Treatment of Detainees,' *American Forces Press Service*, 11 July 2006

¹⁰⁰² DoD Directive 2310.01E, *The Department of Defense Detainee Program*, (Washington DC: DOD, 5 September 2006)

¹⁰⁰³ Kate Mansey, 'Guantanamo: Inside the prison where the US government keeps its 13 most dangerous terrorists,' *Daily Mirror*, 6 May 2010

¹⁰⁰⁴ Kurnaz, pp. 212-213

¹⁰⁰⁵ Cucullu, pp. 120-121

¹⁰⁰⁶ Kurnaz, p. 216

The second major event of Admiral Harris' tenure was the first detainee deaths. On 10 June 2006, three detainees hanged themselves inside their cells.¹⁰⁰⁷ Lieutenant Commander Abuhena Saifulislam, the first Muslim chaplain under TF-160 in 2002, was flown in to perform the burial rites according to Islamic customs.¹⁰⁰⁸ While GTMO critics called the suicides acts of desperation by despondent detainees, Admiral Harris called it an act of asymmetric warfare.¹⁰⁰⁹

The Navy conducted an official investigation, but four former guards from the Maryland National Guard claimed they were instructed not to discuss the events leading to the detainee deaths.¹⁰¹⁰ In a 2009 report, Seton Hall Law School concluded that there were gross inconsistencies regarding the deaths and that the detainees could not have hanged themselves.¹⁰¹¹

The only other detainee deaths reported at GTMO were by Navy Captain Alan Yund at a medical meeting in San Diego, California 22 February 2002.¹⁰¹² But the former TF-160 Chief Medical Officer, Captain Albert Shimkus, denied any detainees died on his watch. Captain Yund stood by his comments, and said Shimkus himself told him about the deaths.¹⁰¹³

Gordon England, the former Navy Secretary who originally implemented the ARBs and CSRTs in 2004 under the OARDEC became the Deputy SECDEF and responded to critics of the process by publishing revised guidelines. A 14 July 2006 ARB memorandum delineated a detailed flow for the ARB process. It discussed the purpose of the boards, its members, rules of procedure, recording boards, threat assessment criteria, how to handle classified material, a board nomination

¹⁰⁰⁷ Sara Wood, 'Three Guantanamo Bay Detainees Die of Apparent Suicide,' *AFPS*, 10 June 2006

¹⁰⁰⁸ Gerry Gilmore, 'Navy Muslim Chaplain Finds His Calling in America,' *AFPS*, 15 September 2006

¹⁰⁰⁹ Cucullu, p. 105

¹⁰¹⁰ Scott Horton, 'The Guantánamo "Suicides": A Camp Delta sergeant blows the whistle,' *Harpers*, 18 January 2010

¹⁰¹¹ Mark Denbeaux, 'Death in Camp Delta,' *Seton Hall Law School*, 2009

¹⁰¹² Alan Yund, *Remarks at the United States of America Armed Forces Epidemiological Board Meeting*, North Island Naval Air Station, San Diego, California, 19 February 2002, p. 108

¹⁰¹³ Jeff Kaye, 'Unreported Detainee Deaths at Guantanamo in Jan-Feb 2002?' *Firedoglake.com*, 18 December 2010

questionnaire, a board designation letter, sample summary letters, sample designation of threat letter, oaths, implementation of the Detainee Treatment Act of 2005, and description of roles, responsibilities, and qualifications of board members.¹⁰¹⁴

England also released a CSRT memo the same day. Specifically, the memorandum covered the tribunal structure, procedures, how to handle classified information, what specifically a tribunal could do, what the detainee was allowed to do, admissibility of evidence, witnesses, burden of proof, determinations of availability of evidence, voting, post hearing procedures, notice to detainees, appointment letter sample, designation letter and qualifications, and roles and responsibilities for tribunal positions.¹⁰¹⁵

After DASD for Detainee Affairs Waxman resigned in December 2005, his replacement, Cully Stimson, was interviewed nine times, which culminated in a final decision by the SECDEF to hire him. Stimson brought a wealth of experience to the post; he previously served on active duty as a top Navy JAG litigator, worked in mergers and acquisitions in the private sector, and worked as an Assistant US Attorney in Washington, DC at the time of his appointment. He understood how to deal with general officers, which was difficult for the younger Waxman who had a hard time earning the respect of senior military officers. Ironically, Stimson had been involuntarily recalled to active duty just after 9/11 and assigned to Florida to potentially defend detainees at GTMO. The SECDEF told him his task as DASD for Detainee Affairs was to do a better job telling the world what the US was doing at GTMO.¹⁰¹⁶

On 22 January 2006, Stimson started; the next day he flew to GTMO for a tour of operations. He quickly realised the GTMO story had not been told properly. The

¹⁰¹⁴ Gordon England, Deputy Secretary of Defense, *Subject: Revised Implementation of Administrative Review Procedures for Enemy Combatants Detained at US Naval Base Guantanamo Bay, Cuba* (Washington DC: DOD, 14 July 2006)

¹⁰¹⁵ Gordon England, Deputy Secretary of Defense, *Subject: Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at US Naval Base Guantanamo Bay, Cuba* (Washington DC: DOD, 14 July 2006)

¹⁰¹⁶ Stimson Interview.

media was fixated on non-existent torture and their perceived illegality of the facility. Back at the Pentagon, he earned the trust of his senior officers. Word quickly went out among Pentagon staff that he was ‘one of them’.¹⁰¹⁷ When Hood’s tour of duty ended, Stimson continued to work well with Admiral Harris, a fellow Naval officer.¹⁰¹⁸

Stimson’s goal was to show that high quality care and custody was already in place and inform the media on the legal framework for non-state actors engaged in the GWOT. He flooded GITMO with international press, accompanying many delegations personally. He gave as many interviews as possible. By June 2006, the press was no longer talking about conditions at GTMO; they moved onto the legal framework for the detainees. Stimson, to further increase transparency, convinced the DOD to allow an award winning, University of California, Berkeley journalism professor to make a documentary at GTMO, which premiered in 2008 before the Television Critics Association.¹⁰¹⁹

Another goal was to improve relations with the ICRC. Although heavily funded by the US, the Geneva-based entity had a negative history with the US military that went back to the Vietnam War. Rumsfeld and England were antagonistic to the ICRC and the US government did not give enough attention to early ICRC reports of detainee abuse in Iraq. Despite this bad blood, Stimson realised ‘the key to success in detainee matters and detainee policy development was to establish a close personal working relationship with not only the ICRC but some of the human rights groups who ‘weren’t out of their mind’.¹⁰²⁰ Stimson approached Geoff Loane, the head of the ICRC delegation in Washington, DC and established a relationship based on mutual trust.

¹⁰¹⁷ Ibid.

¹⁰¹⁸ Ibid.

¹⁰¹⁹ Ibid.

¹⁰²⁰ Ibid.

Although they didn't always agree, Stimson felt the ICRC helped him do his job better.¹⁰²¹

Originally, the DASD for Detainee Affairs office was not to be involved in military commissions, but Stimson was dragged into the policy debate on 29 June 2006, when the US Supreme Court ruled in *Hamdan v. Rumsfeld*. The high court said military commissions violated the Uniform Code of Military Justice and the Geneva Conventions. Stimson recommended modifying the commissions, labeling them courts martial for terrorists, and providing them with experienced prosecutors. Stimson did not believe military JAG officers were experienced enough to prosecute the cases, nor did they have national security trial experience. He argued that only prosecutors with a minimum 100 cases should be used. He suggested recalling JAG reservists who were civilian prosecutors and had the experience to oppose the high priced, well-funded, pro bono detainee lawyers. He suggested restructuring the commission rules to the rules for courts martial and using the Military Rules of Evidence outlined in the UCMJ, which is consistent with Common Article 3 of the Geneva Conventions. The SECDEF did not take his advice.¹⁰²² Instead, on 17 October, Congress passed the Military Commissions Act, authorising military commissions for 'alien unlawful enemy combatants' and suspending *habeas* rights for the detainees in US federal courts.¹⁰²³

Stimson reinvigorated the weekly JDCC meeting that Waxman had pushed off to his deputy, Alan Liotta. It had become more of a deliberative body rather than a decision making body. To ensure its significance, he had the Secretary of the Navy, Gordon England, send out a memorandum that attendance would be taken, it would be chaired by the new DASD, and that he, himself would periodically attend. Stimson also continued the DSLOC meetings; when he became DASD, only 190 to 200 of the 492 recommendations had been implemented, but by the time he left, only six were yet to be

¹⁰²¹ Ibid.

¹⁰²² Ibid.

¹⁰²³ *Military Commissions Act of 2006*, (Washington, DC: US Congress, 2006)

actualised. To foster transparency, Stimson pushed the DOD to release the recommendation results, but due to classification, they did not.¹⁰²⁴

Stimson's two major accomplishments as the DASD were the publication of the new detention directive¹⁰²⁵ and the update of the Army interrogation manual *FM 2-22.3*.¹⁰²⁶ The directive provided a minimum standard of treatment for all DOD detainees regardless of their status including 'Geneva Conventions protections to unconventional forces that don't qualify as enemy prisoners of war as defined by the Geneva Conventions'.¹⁰²⁷ These documents linked and clarified interrogation and detention policies, which had historically been at odds operationally.¹⁰²⁸ The new manual laid out 19 approved approaches authorized for use on detainees and the directive provided clear guidelines for US military detention and interrogation practices and delineated Common Article 3 as the DODs standard for detainee treatment.

In an 11 January 2007 interview with *Federal News Radio*, Stimson questioned the motives of law firms doing *pro bono* work for detainees at GTMO.¹⁰²⁹ The judicial-Geneva Conventions camp pounced on him right away. Deans of 130 law schools criticised him for his remarks and called for the administration to disavow his remarks.¹⁰³⁰ Amid a hailstorm of condemnation, Stimson apologised,¹⁰³¹ and fearing his comments had become a distraction he resigned 2 February.¹⁰³² Deputy Assistant SECDEF for Public Affairs Bryan Whitman, praised Stimson's efforts to 'increase transparency and strengthen relationships with other non-governmental organisations

¹⁰²⁴ Ibid.

¹⁰²⁵ Gordon England, Deputy Secretary of Defense, *The Department of Defense Detainee Program*, Directive 2310.01E (Washington DC: DOD, 5 September 2006)

¹⁰²⁶ Donna Miles, 'New Documents Outline Detention, Interrogation Policies', *AFPS*, 6 September 2006

¹⁰²⁷ England, *The Department of Defense Detainee Program*

¹⁰²⁸ Contractor #2 Interview.

¹⁰²⁹ Neil Lewis, 'Official Attacks Top Law Firms Over Detainees', *NYT*, 13 January 2007

¹⁰³⁰ 'Law Deans Release Statement on Remarks of Cully Stimson Regarding Lawyers for Detainees', *Yale*, 16 January 2007

¹⁰³¹ Cully Stimson, 'An Apology to Detainees' Attorneys', *WP*, 17 January 2007

¹⁰³² Author Unknown, 'Pentagon Official Who Criticized Detainee Lawyers Quits', *WP*, 3 February 2007

and other groups, particularly the International Committee of the Red Cross'.¹⁰³³ Stimson received no pressure from his superior at the DOD or the White House to resign, and in hindsight he believes he should have stayed on.¹⁰³⁴

As GTMO approached the end of its fifth year of operations in September 2006, the CIA transferred 14 HVDs to GTMO to await trial.¹⁰³⁵ They were housed at Camp Seven away from the other detainees.¹⁰³⁶ They appeared at CSRTs starting in March 2007 where their status as ECs was confirmed.¹⁰³⁷

In December, the Military Commissions Act was upheld in court, which paved the way for commissions to start.¹⁰³⁸ On 18 January 2007, the manual for military commissions was published to implement the new act.¹⁰³⁹ On 30 March, Australian David Hicks, after more than five years in detention, pleaded guilty to one charge of providing material support for terrorism and was sentenced to nine months in prison. After the trial, chief prosecutor for the Office of Military Commissions, USAF Colonel Morris Davis said, 'What I hope is going to be reported is that we gave an [Al-Qaeda] terrorist a full and fair trial'.¹⁰⁴⁰

On 22 May 2007, Admiral Mark Buzby replaced Harris.¹⁰⁴¹ Buzby, a Merchant Marine Academy graduate and experienced surface warfare officer,¹⁰⁴² assumed command of a mature TF, focussed on holding existing detainees under the HDC phase three, and working with OARDEC to expedite the release of those eligible under the HDC phase four. One of Buzby's priorities was strategic communications in relation to

¹⁰³³ Donna Miles, 'Gates Recommends PACOM, NORTHCOM Successors; DoD Official Resigns,' *AFPS*, 2 February 2007

¹⁰³⁴ Stimson Interview.

¹⁰³⁵ Author Unknown, 'Bush acknowledges secret CIA prisons - President also pushes legislation to try detainees sent to Guantanamo,' *AP*, 6 September 2006

¹⁰³⁶ Author Unknown, 'Cole Case Arraignment a New Guantanamo Chapter,' *AP*, 9 November 2011

¹⁰³⁷ Sara Wood, 'Administrative Tribunals to Begin for High-Value Guantanamo Detainees,' *AFPS*, 6 March 2007

¹⁰³⁸ Wood, 'Federal Court Rules Against Guantanamo Detainee,' *AFPS*, 14 December 2006

¹⁰³⁹ Robert Gates, Secretary of Defense, *The Manual for Military Commissions* (Washington DC: DOD, 18 January 2007)

¹⁰⁴⁰ Sara Wood, 'Prosecutor: Hicks Case Good Start for Military Commissions,' *AFPS*, 31 March 2007

¹⁰⁴¹ Jeff Johnston, 'Buzby Assumes Command of Joint Task Force Guantanamo,' *AFPS*, 22 May 2007

¹⁰⁴² Admiral Mark H. Buzby, Official Navy Biography, Jr. Current as of 5 September 2010

the mission of GTMO. He travelled the country lecturing on what GTMO was doing and why it existed.¹⁰⁴³

During Buzby's tenure, the ICE OIC had 78 analysts and civilian and military interrogators. The ICE OIC's job was to ensure compliance with Army field manuals and DOD regulations pertaining to detainee interrogation operations. There were more contractors than there were military personnel in the ICE: only about a third were military and of those, none had target language capabilities. Many of the contractors were experienced and recently released Army and Marine personnel. The only approved interrogation approach during Buzby's tenure was the direct approach despite the Army interrogation field manual authorising many others. The detainee to interrogator ratio was roughly 10 to 1 with 275 detainees to about 30 interrogators. Although still a challenge, the odds were better than the ratios of the past when the detainee population was double with the same amount of interrogators. The TF had roughly 90 interpreters to assist with all duties inside the camp.¹⁰⁴⁴

During Admiral Buzby's tenure the historical tensions between the JIG and the JDOG continued but his staff was able to make significant inroads to alleviate tensions. The JDOG was experienced at running a detention facility but did not have expertise in moving detainees around outside of the detention facility. With the start of the commissions, detainees needed to be moved outside the camp to appear at their hearings. The JIG had a mobilised reservist who worked in federal law enforcement and had contacts at the US Marshals Service; moving detainees is core to the marshals' mission. The ICE OIC developed the trust of the JDOG commander and utilised his contacts at the marshals' office to help the JDOG create an SOP for detainee movement.

¹⁰⁴³ Military #18, Author Interview, Virginia Beach, VA, 6 February 2009

¹⁰⁴⁴ Ibid.

This was extremely valuable to the JDOG and led to improved relations between the two organisations.¹⁰⁴⁵

Media relations and delegations visiting the facility continued to be an important part of the TF. Members of the American and international media visited each week. Congressional delegations also came to GTMO. Some visits informed opinions, others did not, but the visits were important for the mission of the camp. Media portrayal of GTMO affected the morale of interrogators and support staff alike. It was important to the TF that news of their successes in producing actionable intelligence which saved military, civilian, and allied lives, be told to the visitors who came to GTMO.¹⁰⁴⁶

While Admiral Buzby toured the country defending operations at GTMO, political opponents from both major political parties pushed for its closure.¹⁰⁴⁷ Additionally, the new SECDEF, Robert Gates, lobbied the administration to close the facility and find another solution for the detainees. Gates acknowledged that one of the major dilemmas was what to do with the 70 detainees cleared to go home whose home governments would not, could not (due to inadequate facilities), or should not (because of the threat of immediate release) accept them back.¹⁰⁴⁸

The Uyghur detainees presented a peculiar problem; they had been cleared for release since April 2003, but even after approaching more than 100 countries, the State Department could not find any country willing to risk angering China by taking them in.¹⁰⁴⁹ In the 2005 CSRT process, 17 were declared no longer enemy combatants.¹⁰⁵⁰ They were ordered released on 7 October 2008,¹⁰⁵¹ and eventually 17 of the 22 were sent to third party countries.

¹⁰⁴⁵ Ibid.

¹⁰⁴⁶ Ibid.

¹⁰⁴⁷ Richard Willing, 'Lawmakers to work on closing Gitmo,' *USA Today*, 8 July 2007

¹⁰⁴⁸ Andrew Grey, 'U.S. efforts to close Guantanamo at standstill: Gates,' *Reuters*, 20 May 2008

¹⁰⁴⁹ Abbas Interview.

¹⁰⁵⁰ Robin Wright, 'Chinese Detainees Are Men Without a Country,' *WP*, 24 August 2005

¹⁰⁵¹ Del Wilber, 'Chinese Muslims Ordered Released From Guantanamo,' *WP*, 8 October 2008

President Bush described the steps the US would have to take to close GTMO: first, the US had to help the Afghans build a new prison to properly house their returning detainees. Second, he directed Secretary of State Condoleezza Rice to work out details with her counterparts to try to repatriate detainees to their home countries and to make sure they would be treated humanely and not be allowed to engage in terrorism again.¹⁰⁵² On 29 June 2007, Virginia Congressman Jim Moran tried to cut funding for the US\$125 million per year facility in hopes of expediting the process. Moran cited the use of the rule of law to charge detainees and wanted to deny enemies in the GWOT the use of GTMO as a propaganda tool against the US.¹⁰⁵³

The case to close GTMO was also hampered by mixed HDC phase four repatriation successes in both Iraq and Afghanistan. While some detainees returned home and shunned war, others returned to the fight. Senior Taliban fighter, Abdullah Ghulam Rasul, also known as Mulah Abdullah Zakir, was captured in December 2001. He spent six years at GTMO and was released and quickly appointed the Taliban commander in Southern Afghanistan.¹⁰⁵⁴ There is no guarantee with a 'catch and release' COA that former detainees will not fight again. Alan Liotta cautioned there was no easy answer; closing GTMO and moving detainees to a US facility would not make problems go away and could even exacerbate the situation based on new legal considerations for detainees on US soil who could potentially be released under the current legal framework.¹⁰⁵⁵ The judicial-Geneva Conventions camp never brought this point up. To them simply closing GTMO and putting them in a US prison is a panacea to cure the wrong that is GTMO.

¹⁰⁵² Author Unknown, 'White House Wants to Close Guantanamo Bay Prison As Soon As Possible,' *AP*, 22 June 2007

¹⁰⁵³ Author Unknown, 'Democrats move to cut Guantanamo funding - Plan is to force prison's closure before the White House can act,' *AP*, 29 June 2007

¹⁰⁵⁴ Author Unknown, 'The one that got away: Taliban's new chief in southern Afghanistan is an ex-Gitmo prisoner, freed,' *NY Daily News*, 11 March 2009

¹⁰⁵⁵ Tim Kilbride, 'Detainee Affairs Debate Begins with Legal Considerations, Official Says,' *AFPS*, 28 June 2007

Ultimately President Bush decided against closing GTMO. He did not have the time left in his presidency to resolve many of the core challenges associated with the prison before his term was over.¹⁰⁵⁶ By the time he left, his administration had reduced the GTMO population by over 50% having released 537 detainees. A large number of detainees that flys against the critics who say GTMO is a black hole with no way out. Most detainees were sent home, but eight detainees were sent to Albania because there were concerns over the detainee's safety if sent home. Albania was the only country willing to help.¹⁰⁵⁷ While many wanted the prison closed, others called for it to be explained better, expanded¹⁰⁵⁸ and turned into a permanent intelligence centre of excellence for interrogation and debriefing.¹⁰⁵⁹

Sandy Hodgkinson, a lawyer who worked detention issues at the National Security Council,¹⁰⁶⁰ had been trying to get the job since its creation. She applied after Waxman left, but Under Secretary of Defence Henry did not want to work with her. After Stimson left, the slot was open for several months before Secretary of State Condaleeza Rice called the new SECDEF, Robert Gates, to recommend Hodgkinson for the job. She was also endorsed by Waxman and John Bellinger at the Special War Crimes Issues Office at the Department of State, the office tasked with the transfer and release of detainees from GTMO. Even after these endorsements, the DOD was still not going to hire her. When Stimson heard people were upset over the vacancy his resignation created, he also recommended Hodgkinson get the job; she was finally hired in July 2007.¹⁰⁶¹

¹⁰⁵⁶ Steven Myers, 'Bush Decides to Keep Guantánamo Open,' *NYT*, 21 October 2008

¹⁰⁵⁷ *Testimony of Ambassador Daniel Fried, Special Envoy for the Closure of the Guantanamo Detainee Facility*, House Armed Services Committee, Sub-Committee on Oversight and Investigations, 13 April 2011, Washington, DC

¹⁰⁵⁸ Deroy Murdock, 'Expand Gitmo! Anything else is embarrassing, and potentially fatal,' *National Review*, 6 July 2007

¹⁰⁵⁹ Kirk Lippold, Author Interview, Crystal City, VA, 29 September 09

¹⁰⁶⁰ Sandra Hodgkinson, Biography, Special Assistant to the Deputy Secretary of Defense, *Emory University*, 6 April 2010

¹⁰⁶¹ Stimson Interview.

Hodgkinson came into the office on the heels of Lieutenant Colonel Stephen Abraham's testimony about problems with the CSRTs at GTMO. Abraham thought the tribunals were deeply flawed. The OARDEC lacked the resources to conduct the tribunals and the lawyers assigned to defend the detainees did not have access to the information required to support their assigned detainees.¹⁰⁶² Hodgkinson dealt with the ICRC and other NGOs interested in US detention policy. After President Obama was elected, one of Hodgkinson's main jobs was to advise the new administration on the difficult issues faced in detainee policy and help them see beyond the political rhetoric about closing GTMO and the operational challenges of moving detainees to a US facility.¹⁰⁶³ Bradford Berenson, a Washington state lawyer who worked on military commission policy for the Bush Administration said:

I think the policies that have led to preventive detention for suspected terrorists at Guantanamo will probably change far less in the new administration than many people on the left hope and expect . . . And that's because those policies were not adopted out of some excessive ideological zeal, they were adopted out of a sincere and genuine concern for protecting the public, and they're based on reality and facts that can't be wished away.¹⁰⁶⁴

The most important policy event during Hodgkinson's tenure was the 9 October 2008 detainee interrogation directive that superseded the previous 2005 directive. The directive delineated that the USD for Policy, who the DASD for detainee affairs directly supported, retained oversight of interrogations but coordinated with the USD for intelligence in crafting policy. The directive consolidated and codified all existing DOD policies into one document encompassing treatment during intelligence interrogations, debriefings, and tactical questioning of detainees. It defined the role of contract interrogators, banned all SERE techniques, banned MPs and dogs from all

¹⁰⁶² LTC Stephen Abraham, 'Appendix I to *Al Odah v. US*, - Declaration of Stephen Abraham, SCOTUS, 14 June 2007

¹⁰⁶³ Jackie Northam, 'Obama Faces Conundrum In Closing Guantanamo,' *Legal Affairs*, 5 January 2009

¹⁰⁶⁴ Ibid.

interrogations, clarified the requirement that only properly trained DOD personal could conduct interrogations, defined the policy of interrogating segregated detainees, and underlined the role of medical/behavioural science in support of interrogations. The new directive left no ambiguity over who controlled the policy and what the policy was.¹⁰⁶⁵

One of Hodgkinson's tasks was to facilitate HDC phase four repatriation of detainees. As part of the agreement to return Saudi detainees to their country, the Saudi government, under the direction of Deputy Interior Minister Prince Muhammad bin Nayef, established an extensive re-education and rehabilitation programme. Led by Abdulrahman Al-Hadlaq, Director of the Interior Ministry's Ideological Security Directorate, 300 detainees, including 106 from GTMO had graduated as of July 2010. From the GTMO graduates, eleven rejoined Al-Qaeda in Yemen after release.¹⁰⁶⁶ The rehabilitation programme was part of a re-education effort in Saudi prisons to provide psychological and religious counseling to enable prisoners to abandon the beliefs that led them to violent organisations. Completion of the programme was required before release from prison. Additional care was afforded to the GTMO detainees who began arriving in 2007. The rehabilitation programme was rooted in Saudi culture and stressed the importance of family and personal relationships; the stronger the family the better the rehabilitation went. Families were accountable to watch over detainees after their release.¹⁰⁶⁷ Other countries including Indonesia,¹⁰⁶⁸ the UK, Egypt, Singapore, Yemen, and Canada also established re-education programmes with varying degrees of success.¹⁰⁶⁹

¹⁰⁶⁵ DoD Directive 3115.09, *DoD Intelligence Interrogation, Detainee Debriefings and Tactical Questioning*, (Washington DC: DOD, 9 October 2008)

¹⁰⁶⁶ Caryle Murphy, 'In Saudi Arabia, re-educating terrorists held at Gitmo,' *Global Post*, 11 September 2010

¹⁰⁶⁷ Ibid.

¹⁰⁶⁸ Marc Sageman, Author Interview, Herndon, VA, 27 March 2009

¹⁰⁶⁹ Douglas Stone, Author Interview, Arlington, VA, 10 March 09

General Douglas Stone, former TF-134 Iraq detention commander, visited many detainee rehabilitation programmes and interviewed every GTMO detainee in the Saudi programme. He felt the Saudi programme was the most well-rounded but sensed many of the former GTMO detainees would revert to their ideological and religious dogmas.¹⁰⁷⁰ Former CIA case officer and terrorist profiler, Dr. Marc Sageman, was convinced the Saudi programme rehabilitated many young people, not because they disavowed their beliefs, but because they were convinced not to act upon them.¹⁰⁷¹

Rear Admiral Thomas, a Naval Academy graduate and career surface warfare officer¹⁰⁷² served at the Pentagon during the attacks on 9/11. He was one of the few who ran into the building to help as others ran out. When he took command of JTF-GTMO on 27 May 2008, it held 270 detainees and was preparing to support the military commissions of five of the perpetrators of the 9/11 attacks.¹⁰⁷³ His tenure began during a presidential campaign in which his TF's mission was hotly contested; then-Senator Obama vowed to close the facility if elected.

Barack Obama was elected President on 4 November 2008¹⁰⁷⁴ and was sworn in on 20 January 2009.¹⁰⁷⁵ On the campaign trail he clearly articulated he was in the judicial-Geneva Conventions camp and on his second day in office, President Obama signed three executive orders. Executive Order 13491: Ensuring Lawful Interrogation reaffirmed Common Article 3 of the Geneva Conventions as the baseline for treatment of detainees and prohibited the use of any technique not included in the updated *FM 2-22.3*. The order revoked all Bush era legal interpretations of interrogation policy issued between 11 September 2001 and 20 January 2009. It ordered the CIA to immediately close all detention facilities and ordered all agencies to notify the ICRC of all detainees

¹⁰⁷⁰ Ibid.

¹⁰⁷¹ Sageman Interview.

¹⁰⁷² Admiral David Thomas Jr., Official Navy Biography, 17 June 2010, Information current as of 5 September 2010

¹⁰⁷³ Carol Rosenberg, '9/11 hero takes over prison camp,' *Miami Herald*, 28 May 2008

¹⁰⁷⁴ Robert Barnes and Michael D. Shear, 'Obama Makes History', *WP*, 5 November 2008

¹⁰⁷⁵ Deborah Tedford, 'Obama Sworn In As Nation's 44th President', *NPR*, 20 January 2009

in custody.¹⁰⁷⁶ Previously, the CIA's prisoners were classified and had been referred to as 'ghost detainees' because they were not registered in the military system.¹⁰⁷⁷ By the time the CIA programme ended, more than 50 prison locations in 28 countries had been utilised.¹⁰⁷⁸ Lastly, the order established an interagency TF on interrogation and detainee transfer policy.¹⁰⁷⁹ While this appeared to be a step towards transparency, in reality, other than the 'enhanced interrogation', President Obama realised the necessity of quietly maintaining the policies and processes of the previous administration including indefinite detention, rendition, and refusal to support lawsuits by former CIA detainees.¹⁰⁸⁰

Executive Order 13492: Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Close of Detention Facilities, called for the closure of the detention facility at GTMO within a year and an immediate review of all individuals detained there whom the DOD had ever labelled ECs. Detainees were specifically granted the constitutional privilege of the writ of *habeas corpus*¹⁰⁸¹ despite the fact the DOD had already done this under the CSRTs.

Executive Order 13493: Review of Detention Policy Options called for the creation of an interagency TF on detainee disposition to conduct a comprehensive review of options available to the government in regards to apprehension, detention, trial, transfer, release, or other disposition of individuals captured or apprehended in connection with armed conflicts and CT operations.¹⁰⁸²

¹⁰⁷⁶ Barack Obama, *Executive Order 13491: Ensuring Lawful Interrogation*, (Washington, DC: Federal Register, 22 January 2009)

¹⁰⁷⁷ General Antonio Taguba Report, AR 15-6, *Investigation of the 800th Military Police Brigade*, (Baghdad, Iraq: Coalition Forces Land Component Command (CFLCC), 26 February 2004)

¹⁰⁷⁸ Sherwood Ross, '28 Nations Helped U.S. Detain Terror Suspects,' *Australia To News*, 31 March 2010

¹⁰⁷⁹ *Executive Order 13491*

¹⁰⁸⁰ Dan Froomkin, 'Obama Hasn't Entirely Abandoned the Bush Playbook,' *WP*, 18 February 2009

¹⁰⁸¹ Barack Obama, *Executive Order 13492: Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Close of Detention Facilities* (Washington, DC: Federal Register, 22 January 2009)

¹⁰⁸² Barack Obama, *Executive Order 13493: Review of Detention Policy Options*, (Washington, DC: Federal Register, 22 January 2009)

As part of his reviews to implement the new executive orders, the White House tasked the DOD to conduct a current assessment of GTMO operations. The Navy appointed Vice Chief of Naval Operations Admiral Patrick Walsh to lead the assessment team.¹⁰⁸³ On 22 February 2009, Admiral Walsh reported the detention facility at GTMO complied with the standards of humane treatment and Common Article 3 of the Geneva Conventions.

The team conducted more than 100 interviews with TF members, made several announced and un-announced camp visits, and observed daily life. ‘The team looked at shelter, clothing, food and water, practice of religion, recreation, the detainee discipline system, protections against violence, sensory deprivation and humiliation, human-to-human contact, health care, interrogation and access to attorneys and outside entities’.¹⁰⁸⁴ Walsh concluded the GTMO prison leadership ‘seeks to go beyond the minimum standard in complying with Common Article 3’.¹⁰⁸⁵ Newly appointed Attorney General Eric Holder visited the camp on 23 February and agreed GTMO was a well-run camp with no signs of abuse.¹⁰⁸⁶

In January 2009, Admiral Copeman, who graduated Punahou High School two years after President Obama in Hawaii, was announced as the new GTMO detention commander.¹⁰⁸⁷ He assumed command on 19 June¹⁰⁸⁸ and was supposed to close the facility down.¹⁰⁸⁹ Copeman, an Officer Candidate School graduate and surface warfare

¹⁰⁸³ Gerry Gilmore, ‘Navy Admiral to Lead Review of Guantanamo Detention Facility,’ *AFPS*, 3 February 2009

¹⁰⁸⁴ Jim Garamone, ‘Guantanamo Complies With Geneva Conventions, Admiral Says,’ *AFPS*, 23 February 2009

¹⁰⁸⁵ *Ibid.*

¹⁰⁸⁶ Randall Mikkelsen, ‘U.S. law chief: Guantanamo “well-run”, but to close,’ *Reuters*, 25 February 2009

¹⁰⁸⁷ Author Unknown, ‘Punahou Grad Selected As Guantanamo Commander,’ *AP*, 30 January 2009

¹⁰⁸⁸ Author Unknown, ‘Copeman Assumes Command at JTF Guantanamo,’ *JTF GTMO PAO*, 19 June 2009

¹⁰⁸⁹ Carol Rosenberg, ‘Guantánamo’s “Closer” leaves new admiral, 181 prisoners behind,’ *Miami Herald*, 28 June 2010

officer, worked closely with the new Obama appointees charged with closing the detention facility.¹⁰⁹⁰

He drew up plans that were never implemented. After a year's tenure, he left and GTMO still held 181 detainees in multiple camps. Copeman worked with the detainee review TF, to release approximately 50 detainees as per the HDC phase four. Many others lived in communal camps where they ate, prayed, and played in small groups. This helped decrease tension between the guards and detainees considerably.¹⁰⁹¹ Despite the closure plan, Copeman continued to host media visits to GTMO. In 2009 alone, 221 news representatives from 140 media outlets visited the facility. By the end of 2010, a total of 2,900 news representatives had visited over the past nine years.¹⁰⁹²

Phil Carter, an Army reserve civil affairs officer, Operation Iraqi Freedom veteran, a detainee policy advocate, and a lawyer who wrote *amicus* briefs for two cases against SECDEF Rumsfeld dealing with detainee issues,¹⁰⁹³ was appointed as the new DASD for detainee affairs on 6 May 2009;¹⁰⁹⁴ his job was to enforce the judicial-Geneva Conventions camps main ideas. When the Pentagon announced in October 2004 that former detainees were returning to the battlefield, Carter blamed Bush policy blowback and asserted that had the US applied the Geneva Conventions, detainees would not have returned to the fight.¹⁰⁹⁵ Carter worked on the Obama presidential campaign reaching out to veterans.¹⁰⁹⁶ Although he made it known to the campaign in

¹⁰⁹⁰ Admiral Tom Copeman, Official Navy Biography, Current as of 21 July 2010

¹⁰⁹¹ Rosenberg

¹⁰⁹² JTF GTMO Mission, Available at: <http://www.jtfgtmo.southcom.mil/>, Accessed 5 September 2010

¹⁰⁹³ Robert Gates, *News Release on Senior Executive Service Appointments/Assignments* (Washington, DC: DOD, 6 May 2009)

¹⁰⁹⁴ Author Unknown, 'About Phil Carter,' *Washington Post*, May 2008

¹⁰⁹⁵ Carol Rosenberg, 'Army vet who opposed Bush detainee policies takes key job,' *Miami Herald*, 29 April 2009

¹⁰⁹⁶ Author Unknown, 'Names: Pentagon,' *Foreign Policy*, 18 February 2009

late 2008 that he hoped to work for the administration, after he was tapped to be DASD for detainee affairs, it took more than four months to get him cleared for the job.¹⁰⁹⁷

Carter came into a well-run DASD office managed by Alan Liotta, the career DOD deputy. Liotta had established an efficient office and staff morale was high. The 15 full time staffers were knowledgeable on detainee affairs, as many of them had worked the issue for more than six years. They had a wealth of historical knowledge and also tapped into a network of civilians who had worked at GTMO for the past seven years. Carter leveraged the advice of two former DASDs; he consulted with Waxman several times and spoke daily with Hodgkinson who was still working in the DOD policy office.¹⁰⁹⁸

The Detainee Affairs office along with the SOLIC and AFPAK offices had the highest operational tempos in the Pentagon. They touched the war on a daily basis while the rest of the Pentagon was on peacetime footing. Initially, Carter focussed on emptying the prisons in Iraq, building detainee capacity to support the broader campaign in Afghanistan, and continued safe, humane, and lawful detention at GTMO while trying to find a way to close it, according to the President's executive order. Carter spent a great deal of time at interagency leadership and planning meetings, a deputies weekly meeting, and a monthly principles meeting. Much of his office staff time was spent in meetings to prepare the SECDEF and the DEPSECDEF on detainee affairs.

Carter also met with the ICRC regularly, both in Washington, DC and in Geneva. He developed a trusted relationship with the ICRC; they provided valuable feedback and kept confidentiality. Carter's office improved and monitored the 492 recommendations that had previously been implemented; he felt constant improvement

¹⁰⁹⁷ Phil Carter, Author Interview, Rosslyn, VA, 31 October 2011

¹⁰⁹⁸ Ibid.

was the key.¹⁰⁹⁹ In 2009, ICRC delegation chief in Washington, DC Geoff Loane, who had been very helpful to previous DASDs, left and was replaced in September by Mary Werntz.¹¹⁰⁰ Werntz, stated she wanted to continue the good work Loane had done and maintain the ICRC's 'outstanding reputation'.¹¹⁰¹

Carter's office focused on three main issues during his time as the DASD: first, the Detainee Review Task Force. Carter detailed two people from his staff to support this DOJ lead effort. His staff had a vote regarding the disposition of the detainee dossiers that were reviewed. Second, he informed the DOD response to *habeas* litigation on behalf of the detainees. He advised the Senior DOD legal counsel who managed the detainee *habeas* litigation process and the DOJ on the same matter. Third, Carter led the effort to implement President Obama's order to close GTMO; this eventually became his top priority. Carter's office led survey teams to potential new sites for a detention facility. Carter often led the teams personally, especially to civilian sites where he engaged publicly with the local city officials and media. When the survey teams went to potential military installations he did not attend since there was no public engagement element; his staff handled the rest. At times he brought Harley Lappin with him, head of the bureau of prisons, to provide insight to the field survey teams looking at new sites. The survey teams required more personnel than the office and Carter recruited personnel from the OARDEC office, which had more than 70 people.¹¹⁰²

Within the Office of the SECDEF, all the departments examined the lines of effort that would be affected by the closure of the GTMO detention facility. The process

¹⁰⁹⁹ Ibid.

¹¹⁰⁰ Ibid.

¹¹⁰¹ Author Unknown, 'Delegation Leaders Reflect on the Work of the ICRC,' *Red Cross*, 22 September 2009

¹¹⁰² Carter Interview.

raised a lot of issues that exposed second, third, and fourth order effects and manifested the real challenges of implementing the president's order.¹¹⁰³

Carter travelled frequently to Cuba, Iraq, Afghanistan, and Thompson, Illinois, the site of a facility where the Obama Administration wanted to ship the GTMO detainees.¹¹⁰⁴ The Illinois prison became a lightning rod in the debate; Congress eventually blocked funding to close GTMO and upgrade the Thompson prison.¹¹⁰⁵ Opinion polls indicated the American public was strongly opposed to closing GTMO and setting the detainees free.¹¹⁰⁶ In November 2009 when Obama announced he would not meet the deadline to close GTMO, Carter abruptly quit without giving any warning to the DOD.¹¹⁰⁷ Carter stated: 'I was happy to have served in the position; I had a good experience but was ready to move on'.¹¹⁰⁸

During his seven-month tenure, Carter also enforced policy change by amending the terminology used to describe detainees. In March 2009, the administration had decided to stop using the term 'enemy combatant' and preferred 'detainee'.¹¹⁰⁹ In a July 2009 detention guidance document for Afghanistan, Carter referred to detainees as 'aliens' and 'unprivileged enemy belligerents'.¹¹¹⁰ The new terminology was Carter's attempt to move away from what he felt was an inflammatory label in favour of terms that were more in compliance with international law.¹¹¹¹ When the revised Obama

¹¹⁰³ Ibid.

¹¹⁰⁴ Author Unknown, 'The plan to move Gitmo detainees to the U.S. has a gaping hole, *WP*, 19 December 2009

¹¹⁰⁵ Evan Perez, 'Attorney General Lashes Out at New Gitmo Curb' *WSJ*, 10 December 2010

¹¹⁰⁶ Scott Rasmussen, '75% Worried That Gitmo Closing Will Set Dangerous Terrorists Free,' *Rasmussen Reports*, 25 August 2009

¹¹⁰⁷ Rosenberg, 'Detainee policy appointee quits Pentagon post,' *Miami Herald*, 24 November 2009

¹¹⁰⁸ Carter Interview.

¹¹⁰⁹ William Douglas and Carol Rosenberg, 'Guantanamo inmates no longer called "enemy combatants",' *McClatchy*, 13 March 2009

¹¹¹⁰ Phil Carter, Deputy Assistant Secretary of Defense for Detainee Affairs, Letter to the Honourable Senator Carl Levin, *Detainee Review Procedures at Bagram Theatre Internment Facility (BTIF)*, *Afghanistan*, (Washington, DC: DOD, 14 July 2009)

¹¹¹¹ Carter Interview.

military commissions restarted at GTMO in February 2011, detainees were referred to as ‘alien enemy unprivileged belligerents’.¹¹¹²

To implement Executive Order 13491: Ensuring Lawful Interrogation, the Obama DOJ created the Special TF on Interrogation and Transfer Policies headed by Douglas Wilson, the Chief of the National Security Unit in the US Attorney’s Office for the Northern District of California. This interagency TF was supposed to determine if the Army interrogation manual guidelines were appropriate for non-DOD organisations to use to collect intelligence or if other methods were needed. The TF also examined the process the US used in transferring detainees to other nations and determine how to best to ensure their safety under international law.¹¹¹³

On 24 August, the TF released their findings that the Army interrogation manual *FM 2-22.3* and current LEA practices were sufficient for conducting interrogations. They also recommended the creation of a scientific research programme to study and compare the most effective techniques and develop new ones to improve intelligence interrogations. The TF made several suggestions aimed at improving the US’s capability to monitor detainees transferred to other countries to ensure proper treatment. Lastly, the TF recommended the creation of a High-Value [Detainee] Interrogation Group (HIG) led by the FBI (instead of the CIA), and comprised of the most experienced interrogators and support personnel from the IC, DOD, and LEA communities.¹¹¹⁴

President Obama, true to his camps viewpoints of focussing on the judicial route as opposed to the intelligence-collection camp, immediately signed off on the FBI-led group; a clear break from the Bush Administration that gave the CIA primacy over CT

¹¹¹² Cheryl Pellerin, ‘Panel Chosen for Sentencing Portion of Detainee Trial,’ *AFPS*, 16 February 2011

¹¹¹³ Press Release, ‘Attorney General Appoints Officials to Lead Task Force Reviews on Interrogation and Detention Policy,’ *DOJ*, 11 March 2009

¹¹¹⁴ Press Release, ‘Special Task Force on Interrogations and Transfer Policies Issues Its Recommendations to the President,’ *DOJ*, 24 August 2009

interrogations and HVD interviews.¹¹¹⁵ Andrew McCabe, a seasoned FBI CT investigator, was tapped to head the HIG. He explained the HIG consisted of three to five teams of interrogators based in Washington, DC mostly from the FBI with a few from the CIA and the DIA. A clandestine service CIA officer filled a deputy HIG position in order to provide knowledge of Al-Qaeda.¹¹¹⁶ On 6 February 2010, the HIG was operational and ready to support interrogations in all 106 Joint Terrorism Task Forces (JTTFs) nationwide.¹¹¹⁷

To implement Executive Order 13492: Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Close of Detention Facilities, the Guantanamo Detainee Review Task Force was created. Headed by Matthew Olsen, former DOJ Acting Assistant Attorney General for the National Security Division, the TF was charged with reviewing the case files of every detainee at GTMO and making a recommendation.¹¹¹⁸ Olsen's TF was comprised of approximately 65 people on two teams: one identified detainees who were no longer considered a threat and could be transferred to other countries, the other determined if the remaining detainees could be prosecuted in federal court or by military commissions. Detainees who could not be released or stand trial in a commission or federal court were slotted for indefinite detention; an alternative Obama said he was averse to when running for president.¹¹¹⁹

The first challenge for the TF was the copious amount of detainee data distributed among various agencies. By late April, the TF had logged 1.8 million pages of information on the 240 GTMO detainees into their database.¹¹²⁰ Once all the data was collected and entered into a secure network, the TF met weekly. In determining a detainee's status, the review panel had to vote unanimously, or the case was sent to the

¹¹¹⁵ Anne Kornblut, 'New Unit to Question Key Terror Suspects,' *WP*, 24 August 2009

¹¹¹⁶ Evan Perez and Siobhan Gorman, 'Interrogation Team Is Still Months Away,' *WSJ*, 22 January 2010

¹¹¹⁷ Marc Ambinder, 'FBI's High-level Interrogation Group Is Up And Running,' *The Atlantic*, 6 February 2010

¹¹¹⁸ Press Release, 'Attorney General Appoints Executive Director to Lead New Task Force on Review of Guantanamo Bay Detainees,' *DOJ*, 20 February 2009

¹¹¹⁹ Dafna Linzer, 'Review of Gitmo Detainees Has Been Slow and Complex,' *ProPublica*, 26 June 2009

¹¹²⁰ Dafna Linzer, 'Review of Gitmo Detainees Has Been Slow and Complex,' *ProPublica*, 26 June 2009

cabinet level for final decision. Yemeni detainees posed the greatest challenge, because of their government's inability to prevent them from escaping. Although the one-year deadline to close GTMO seemed daunting, Olsen argued the deadline was critical to moving the process along.¹¹²¹

In June 2009, the TFs' results were delayed and each was given more time to work through their challenges.¹¹²² After missing the original deadlines and the deadline to close GTMO, Olsen's TF findings were published 22 January 2010. Of the 240 detainees reviewed, 126 were approved for transfer; of these, 44 had already left due to the efforts of Ambassador Daniel Fried, who was appointed as the Special Envoy for the Closure of the Guantanamo Detainee Facility on 13 March 2009.¹¹²³ Fried led the State Department effort to find other countries willing to accept detainees from GTMO who had been cleared for release but whose home countries would not take them back.¹¹²⁴

Another 44 detainees were referred for prosecution either in federal court or a military commission and 36 of these detainees remained the subject of active cases or investigations. The US announced it would pursue prosecutions against six detainees in federal court and six detainees in military commissions. The 30 Yemeni detainees were designated for conditional detention due to the inability of the Yemeni government to secure them at home. Finally, 48 detainees were deemed too dangerous to transfer and not feasible to prosecute.¹¹²⁵

In 2011, the Obama Administration selected Olsen as director of the new National Counterterrorism Centre (NCTC).¹¹²⁶ At his confirmation hearing, Virginia Congressman Frank Wolf accused him of lying about the status of two Uyghur

¹¹²¹ Author Unknown, 'How to Close Down Guantanamo Bay,' *BBC*, 17 January 2010

¹¹²² Peter Finn, 'Reports on U.S. Detention Policy Will Be Delayed,' *WP*, 21 July 2009

¹¹²³ *Testimony of Ambassador Daniel Fried, Special Envoy for the Closure of the Guantanamo Detainee Facility*, House Armed Services Committee, Sub-Committee on Oversight and Investigations 13 April 2011, Washington, DC.

¹¹²⁴ David Gollust, 'Clinton Names Envoy to Expedite Guantanamo Closure,' *VOA*, 13 March 2009

¹¹²⁵ Matt Olsen, 'Final Report Guantanamo Review Task Force,' *DOJ*, 22 January 2010

¹¹²⁶ Keith Johnson, 'Obama Picks New Head for Counterterrorism Center,' *WSJ*, 1 July 2011

detainees when he was in charge of the Detainee Review Task Force. Although Olsen told Wolf in a 22 April 2009 meeting that no decision had been made, Wolf later discovered the decision to move the Uyghurs to the US was approved 14 April.¹¹²⁷

At his July 2011 senate confirmation hearing, Olsen said he made decisions with unanimous support from all agencies in the TF and stated Congressman Wolf ‘suffered from a mis-recollection’ about the Uyghur briefing.¹¹²⁸ Georgia Senator Saxby Chambliss asked Olsen if he had seen any evidence the country was safer or if Al-Qaeda recruits had decreased as a result of the president’s announcement to close GTMO. Olsen said he had seen nothing to indicate a change in Al-Qaeda recruiting based on the announcement.¹¹²⁹

On 5 January 2010, President Obama said closing GTMO was important because of its recruiting value to Al-Qaeda.¹¹³⁰ When the detainee review TF report was released 25 January and he announced GTMO was not closing, Obama reiterated that GTMO was a major recruiting tool for Al-Qaeda. However, *mujahid* recruitment videos rarely mentioned GTMO, but used Bagram as a rallying point. In the previous seven years, Al-Qaeda referred to GTMO in videos 32 times and affiliate groups 26 times. In 2009, they only mentioned GTMO four times in discussing other prisons holding Muslims.¹¹³¹ According to American Al-Qaeda member Adam Ghadan:

Americans have to understand that the important thing isn’t whether our brothers are being held in Cuba, or in Afghanistan, in Diego Garcia, or in Belmarsh, in Michigan, or Montana or in Fort Leavenworth . . . They are being held without right by unbelievers in God’s divine law.¹¹³²

¹¹²⁷ Peter Finn, ‘Wolf criticizes counterterrorism nominee over detainee resettlement plans,’ *WT*, 14 July 2011

¹¹²⁸ ‘Open Hearing: Nomination of Matthew Olsen to be Director of the National Counterterrorism Center,’ *United States Senate*, 26 July 2011

¹¹²⁹ Congressman Frank Wolf, ‘Wolf Responds To Olsen Testimony,’ 26 July 2011

¹¹³⁰ Author Unknown, ‘Obama reaffirms Guantanamo plans,’ *BBC*, 5 January 2010

¹¹³¹ James Meek, ‘Gitmo Fades As ‘Recruiting Tool For Al Qaeda,’ *NY Daily News*, 25 January 25 2010

¹¹³² *Ibid.*

Ghadan underlined the administration's fallacy that closing GTMO would reduce extremist recruiting. Ultimately, President Obama lost the battle; on 16 February 2011, when asked where Bin Laden would go if captured, CIA Director Leon Panetta said: 'The process would obviously involve - especially with the two targets [Bin Laden and Zawahiri] that you just described - we would probably move them quickly into military jurisdiction at Bagram for questioning and then eventually move them, probably to Guantanamo'.¹¹³³ Despite the political rhetoric, GTMO was clearly central to the administration's CT detention programme.

To implement Executive Order 13493: Review of Detention Policy Options, the Special Task Force on Detention Policy was created. Co-chaired by Brad Wiegmann, the Principal Deputy and Chief of Staff in the DOJ National Security Division¹¹³⁴ and Colonel Mark Martins, an Army JAG officer,¹¹³⁵ the TF was charged with the review of all options available to the US government for the apprehension, detention, trial, transfer, release or other disposition of individuals captured or apprehended in connection with armed conflicts and CT operations.¹¹³⁶

On 20 June 2009, the TF issued a preliminary report stating it needed more time to explore all options for the detainees as well as the long-term consequences. It discussed military commissions and civilian courts and argued that while some terrorists had successfully been tried in US courts, historically, violations of the laws of war were tried in military commissions. The report also said no ECs would be Mirandized, as that was meant for law enforcement. It also called for the Military Commissions Act of 2006 to be revised; eight key changes were suggested to make it viable and legal:

¹¹³³ Jordy Yager, 'Panetta: If captured, bin Laden would be held at Guantánamo,' *The Hill*, 16 February 2011

¹¹³⁴ Press Release, 'Attorney General Appoints Officials to Lead Task Force Reviews on Interrogation and Detention Policy,' *DOJ*, 11 March 2009

¹¹³⁵ General Mark Martins, United States Army, CENTCOM Biography, Accessed 13 November 2011

¹¹³⁶ Press Release, 'Attorney General Appoints Officials to Lead Task Force Reviews on Interrogation and Detention Policy'

1. Codify in law prohibition on using statements obtained through cruel, inhuman and degrading treatment.
2. Regulate the use of hearsay to bring rules in line with the federal courts or military courts-martial.
3. Adopt a voluntariness standard for the admission of statements of the accused based on battlefield realities.
4. Incorporate classified information procedures that are similar to those in federal courts but modified for the commissions.
5. Reform appellate process to give reviewing courts more authority.
6. Develop clear rules requiring the government to disclose evidence favourable to the detainees.
7. Ensure offenses charged in the commissions are law of war offenses.
8. Include a sunset clause that has congress revisit the law after some years.¹¹³⁷

Many of these changes were incorporated into the 28 October Military Commissions Act of 2009 and the 27 April 2010 manual for military commissions which resumed under President Obama.¹¹³⁸

Some defence lawyers and human rights groups complained that the changes in procedures and rules favoured the prosecution. Retired USAF Colonel Morris Davis, who resigned as chief prosecutor for the trials in October 2007, said the trials should be moved to a US federal court to avoid the perception of illegitimacy.¹¹³⁹

After months without a DASD for detainee affairs, the Obama Administration appointed in February 2010, USMC Colonel William Lietzau, deputy legal counsel to

¹¹³⁷ Brad Wiegmann and Colonel Mark Martins, 'Detainee Policy Task Force's Preliminary Report, *Department of Justice/Department of Defense*, 20 July 2009

¹¹³⁸ *Military Commissions Act of 2009*, (Washington, DC: US Congress, 2009)

¹¹³⁹ Author Unknown, 'Cole Case Arraignment a New Guantanamo Chapter,' *AP*, 9 November 2011

the National Security Council, to the position.¹¹⁴⁰ Lietzau had been a key player behind the scenes early on in the Bush Pentagon. He helped create the first version of the military commissions struck down by the US Supreme Court and voted against by then-Senator Obama. Despite his early Bush detainee policy involvement, his pragmatic, non-ideological, and energetic reputation won him the position.¹¹⁴¹ Lietzou had myriad experience in international criminal law, counternarcotics, interdictions, piracy, CT, weapons of mass destruction (WMD), non-proliferation, missile defence, foreign assistance, and treaty implementation.¹¹⁴²

As DASD for detainee affairs, Lietzou dealt with a new political environment marked by efforts to close GTMO over the previous year. The Yemeni government was unable to properly incarcerate their repatriated detainees. In addition, the Christmas 2009 ‘Underwear Bomber’ and 2010 Times Square car bombing attempts depleted the last shreds of political will to close GTMO. Lietzou focused on continuous improvement of detention operations, finalised the closeout of all remaining detention operations in Iraq, and supported policy to enhance operations in Afghanistan.¹¹⁴³

A major policy change was announced 17 May 2010; the Pentagon ordered all military personnel to record all strategic level interrogations on US bases including GTMO and the DFIP. This did not apply to tactical interrogations conducted in the field.¹¹⁴⁴ In November, as part of a provision in the 2010 National Defence Authorisation Act, contracted interrogators were banned from conducting interrogations. This was problematic; the US military relied heavily on contract interrogators to accomplish the work due to not enough trained military interrogators.

¹¹⁴⁰ Spencer Ackerman, ‘Key Figure in Bush’s Military Commissions Set for Obama Job: Marine Colonel Tapped for Detainee Policy Post Worked for Top Rumsfeld Aide,’ *Washington Independent*, 9 February 2010

¹¹⁴¹ Ibid.

¹¹⁴² William Lietzau, Official Biography, Deputy Assistant Secretary of Defense for Detainee Policy

¹¹⁴³ Carter Interview.

¹¹⁴⁴ Kevin Spak, ‘Military to Tape All Interrogations on Bases,’ *Newser*, 18 May 2010

The law did permit the SECDEF to waive the prohibition for a period of time if it is ‘vital to the national security interests of the United States’.¹¹⁴⁵

Lietzou also worked closely with Rosa Brooks, the DASD for the first ever DOD office to look at ‘emerging non-traditional military activities like compliance with the rule of law, humanitarian emergencies and human rights’.¹¹⁴⁶ The office was created in June of 2010 to ensure the Obama administrations strategic goals of adhering to the international rule-of-law in on-going wars was at the forefront and not lost in contingency planning. Brooks stated that COIN and CT doctrine had moved towards a rule-of-law approach in order for operations to gain legitimacy in the eyes of the population being protected. Former DASD for detainee affairs, Mathew Waxman said the creation of the new office was ‘a step toward integrating law and strategy’, something that was often lost in war planning.¹¹⁴⁷

The biggest change wrought under his tenure took place on Friday, 17 June 2011 when the office for detainee affairs was merged with Rosa’s office, the office for rule-of-law and international humanitarian policy, to become the office for the rule-of-law and detainee policy. The Obama administration, unable to close GTMO, grappling with a myriad of detainee, rule of law and humanitarian issues, and a tightening defense budget, merged the two offices. The merger made the detainee affairs office, once thought to be temporary and would end with the end of the wars in Iraq and Afghanistan, permanent.¹¹⁴⁸ Former DASD for detainee affairs, Phil Carter said: ‘There’s a natural synergy between the detainee portfolio, and the broader rule-of-law and human rights portfolio’.¹¹⁴⁹

¹¹⁴⁵ Robert Brodsky, ‘Defense bans contractors from interrogating detainees,’ *GOVEXEC*, 4 November 2010

¹¹⁴⁶ Spencer Ackerman, ‘Pentagon Creates Office to Bolster International Legitimacy’, *Washington Independent*, 8 June 2010

¹¹⁴⁷ *Ibid.*

¹¹⁴⁸ Spencer Ackerman, ‘Pentagon Mashes Up Rule of Law, Detainee Offices,’ *Wired*, 15 June 2011

¹¹⁴⁹ *Ibid.*

Admiral Harberson, a University of Maryland and Naval War College graduate, assumed command of JTF-GTMO on 25 June 2010¹¹⁵⁰ after several successful tours as a surface warfare officer.¹¹⁵¹ When he took command, about 160 of the 181 prisoners were living in the minimum security communal living Camps Four and Six. Detainees ate together and had up to 20 hours of recreation time per day. In the first seven months of 2010, only 60 assaults on guards were reported compared to 1,000 in 2009. There had not been a confirmed case of a guard assaulting a detainee since 2004.¹¹⁵²

Detainees in Camps Four and Six wore white jumpsuits and had access to a 17,000-book library and flat screen TVs with 18 channels including *Al-Jazeera* English, a sports channel, broadcasts focusing on Tunisia, Libya, and Kuwait, movies, and Skype. They attended English classes and ‘life skills’ classes, which taught personal finance, business finance, and other vocations.¹¹⁵³ Their ice cream rations were, however, reduced to one per detainee.¹¹⁵⁴

Camps One, Two, and Three held the non-compliant detainees who wore orange jumpsuits. Camp Five was equivalent to a supermax prison and held the four alleged war criminals destined for commissions. These detainees lived in 8 by 12 foot cells with a steel door with an opening to pass meals and books through.¹¹⁵⁵ Camp Seven was for the HVDs.¹¹⁵⁶ In the event of a final closure order, Harberson would need six months to empty all the camps.¹¹⁵⁷

¹¹⁵⁰ Author Unknown, ‘Harbeson takes over as commander of JTF-GITMO,’ *Navy Times*, 25 June 2010

¹¹⁵¹ *Ibid.*

¹¹⁵² Author Unknown, ‘Assaults on Guantanamo guards take big drop, U.S. says,’ *USA Today*, 3 July 2010

¹¹⁵³ Mike Levine, ‘Gitmo Detainees Serve Time By Playing Games, Talking to Family on Skype, Taking Classes,’ *FoxNews*, 13 July 2010

¹¹⁵⁴ Author Unknown, ‘Guantanamo Bay rations detainees’ ice cream portions,’ *Daily Mail*, 26 September 2010

¹¹⁵⁵ Carol Rosenberg, ‘Waste wars: Captives ‘weaponize’ bodily fluids,’ *Miami Herald*, 16 June 2011

¹¹⁵⁶ Robert Verkaik, ‘Life in camp: art class for some, solitary confinement for others,’ *The Independent*, 19 August 2010

¹¹⁵⁷ Author Unknown, ‘Obama Closure of Guantanamo Bay at Least 6 Months Away, U.S. Commander Says,’ *FoxNews*, 19 August 2010

On 17 November 2010, President Obama's experimentation with civilian trials for detainees was pushed to the limit. Ahmed Khalfan Ghailani, charged for his role in the 1998 Tanzania Embassy bombing, was acquitted on 284 charges and found guilty on only one. While some praised the conviction, others feared putting terrorism trials in US courts would be disastrous. Public opposition to civilian trials pressured the administration to bring them back to GTMO.¹¹⁵⁸ The difficulty in trying ECs in US civilian courts was that they could be released on procedural grounds, a fear the intelligence-collection school of thought has always feared. The detainees had not been Mirandized when taken into custody, and could potentially sue for unlawful imprisonment.¹¹⁵⁹ Former US Attorney General Mulkasey stated:

The battlefield, where [KSM] and others were captured, does not provide the setting in which evidence can be gathered the way it is when a defendant is apprehended by civilian authorities. In civilian trials, federal rules restrict admissibility of evidence; in military commissions, the touchstone for admissibility is simply relevance and apparent reliability.¹¹⁶⁰

On 7 March 2011, President Obama stated the detainee reviews were complete and the military commissions would resume at GTMO. He signed an executive order placing the 48 GTMO¹¹⁶¹ detainees deemed too dangerous to release and not eligible for trial in indefinite detention and subject to an annual Periodic Review Board (PRB),¹¹⁶² which functioned much like a parole board.¹¹⁶³ Coming from one of the most vociferous critics of the Bush era detainee policies, this indefinite detention order is shocking. A spokesperson for the Centre for Constitutional Rights said:

¹¹⁵⁸ Author Unknown, 'The Verdict on Holder: How to botch a terrorist trial and harm the U.S. reputation for justice,' *WSJ*, 19 November 2010

¹¹⁵⁹ Rich Lowry, 'Close Gitmo? The misguided chants continue,' 14 June 2005, *National Review*

¹¹⁶⁰ Michael Mukasey, 'Why a civilian trial at Gitmo isn't the answer,' *Madison.com*, 24 July 2010

¹¹⁶¹ Peter Finn and Anne Kornblut, 'Obama administration readies indefinite detention order for Guantanamo detainees,' *WP*, 21 December 2010

¹¹⁶² President Barack Obama, 'Executive Order--Periodic Review of Individuals Detained at Guantánamo Bay Naval Station Pursuant to the Authorization for Use of Military Force,' *White House*, 7 March 2011

¹¹⁶³ Charlie Savage, 'Detainee Review Proposal Is Prepared for President,' *NYT*, 21 December 2010

The creation of a review process that will take up to a year designed to be repeated every four years is a tacit acknowledgment that the Obama Administration intends to leave Guantanamo as a scheme for unlawful detention without charge and trial for future presidents to clean up, despite the fact that senior officials acknowledged today that keeping the prison open continues to hinder our national security in the long run.¹¹⁶⁴

On 4 April 2012, US Attorney General Eric Holder announced Khalid Sheikh Mohammed, the operational planner of the 9/11 attacks, would stand trial at GTMO for war crimes before a military commission along with four additional co-conspirators.¹¹⁶⁵ Legislation passed in December 2011 blocked the DOD from spending monies during fiscal year 2011 to move GTMO detainees to the US for any reason. The bill also stated that no monies could be used to purchase facilities for GTMO detainees in the US,¹¹⁶⁶ effectively rejecting the Obama Administration request for US\$237 million to purchase the prison in Thompson, Illinois.¹¹⁶⁷ New York Mayor Michael Bloomberg praised the legislation reiterating his opinion that holding terrorism trials in NYC was a mistake.¹¹⁶⁸ New York Senator Chuck Schumer called it ‘the final nail in the coffin of that wrong-headed idea’.¹¹⁶⁹

The US population mostly agreed; a March 2011 Rasmussen Report indicated 58 per cent of likely voters said GTMO should not be closed; 60 per cent said terrorists should be tried before military tribunals and not in US courts. In a December 2010 poll, 84 percent of likely voters were concerned terrorists would be set free if GTMO was closed and some prisoners were transferred to other countries.¹¹⁷⁰

¹¹⁶⁴ Author Unknown, ‘Obama orders resumption of military commissions at Guantanamo,’ *CNN*, 7 March 2011

¹¹⁶⁵ Savage, ‘In Reversal, 9/11 Plotter to Be Tried by Military Panel,’ *NYT*, 4 April 2011

¹¹⁶⁶ Peter Landers, ‘Congress Bars Gitmo Transfers,’ *WSJ*, 23 December 2010

¹¹⁶⁷ Ed Tibbetts, ‘Feds still seeking funds to buy Thomson prison,’ *The Quad-City Times*, 21 December 2010

¹¹⁶⁸ James Vicini, David Alexander, ‘September 11 suspects to be tried at Guantanamo Bay,’ *Reuters*, 4 April 2011

¹¹⁶⁹ *Ibid.*

¹¹⁷⁰ Scott Rasmussen, ‘Most Voters Still Support Guantanamo Prison, Military Tribunals for Terrorists,’ *Rasmussen Reports*, 14 March 2011

On 18 May 2011, an Afghan detainee hung himself at GTMO, bringing the total detainee population to 171. This was the eighth detainee to die at the camp since it opened; six took their own lives and two died of natural causes.¹¹⁷¹

On 10 August, the Navy announced Admiral David Woods would lead the detention TF into a second decade of operations.¹¹⁷² Woods, who lost two Naval Academy classmates on 9/11, was a highly decorated naval flight officer with more than 1000 carrier landings and a command tour in Iraq.¹¹⁷³ On 27 August, with very little publicity, the JTF announced via their website that Woods had taken command on 24 August.¹¹⁷⁴

Under Woods, the base expanded operations; a new detention hospital was built closer to the camp, and the media centre was expanded to accommodate journalists attending the imminent trials at Camp Justice for the five alleged 9/11 conspirators and the USS *Cole* bomber. Woods also requested more forces to secure the court, conduct image screening for operational security, and provide reporter and lawyer escorts.¹¹⁷⁵

During Wood's first few weeks, on 13 September 2011, the Director of National Intelligence James Clapper testified the recidivism rate for former GTMO detainees had risen to an estimated 27 percent; the total number of 'confirmed' and 'suspected' recidivists was now 161.¹¹⁷⁶ This was a significant increase from the 14 percent rate reported by the Pentagon on 6 January 2010.¹¹⁷⁷

On 3 October 2011, General Mark Martins, newly returned from a two year tour working CJITAF-435 detainee and rule of law operations in Afghanistan, was appointed to lead the prosecution of the detainees at Camp Justice under the Obama

¹¹⁷¹ Author Unknown, 'Gitmo Prisoner Dies in Apparent Suicide,' *AP*, 19 May 2011

¹¹⁷² US Navy Flag Officer Moves and Announcements, *Navy Personnel Command*, 10 August 2011

¹¹⁷³ JaNae Francis, 'Ogden native to command Guantanamo Bay,' *Standard-Examiner*, 17 August 2011

¹¹⁷⁴ Carol Rosenberg, 'At Guantanamo, Woods quietly takes command,' *McClatchy*, 29 August 2011

¹¹⁷⁵ Rosenberg, 'Ogden native preparing Guantanamo Bay for 9/11 trials,' *McClatchy*, 17 September 2011

¹¹⁷⁶ Thomas Joscelyn, 'Guantanamo Recidivism Rate Climbs Higher,' *Weekly Standard*, 14 September 2011

¹¹⁷⁷ Donna Miles, 'Morrell: U.S. Security Paramount in Detainee Determinations,' *AFPS*, 6 January 2010

Administration's revised rules. The trials were to be broadcast to the US with a 40 second transmission delay.¹¹⁷⁸ Former Chief Prosecutor Colonel Morris Davis, who resigned in 2007, said the trials should be moved to the US to avoid the perception of illegitimacy as a 'kangaroo court'.¹¹⁷⁹

On 9 November, the Saudi-born planner of the 2000 *Cole* bombing, Abd-al-Rahim Al-Nashiri, appeared before an Army judge at Camp Justice nine years after being captured. The Obama Administration sought the death penalty against Al-Nashiri, who is accused of killing 17 US sailors. Critics of the trial say he was tortured by the CIA. General Mark Martins, said, 'no evidence gleaned through torture would be used at a trial'.¹¹⁸⁰

In October, Woods ordered guards to search detainees' cells and personal effects to ensure that mail from their lawyers and families was not mixed together and kept in separate bins; they also searched for hidden incendiary materials.¹¹⁸¹ He changed detainee mail policy; previously guards opened mail in front of the detainee to search for banned items, but did not read correspondence, now guards read the letters.¹¹⁸² On 28 December, Woods adjusted the policy requiring a security review of all legal correspondence for only prisoners facing war crimes charges. His order created a combined military and law enforcement team to check detainee mail for unauthorised information. Detainee lawyers protested it violated the attorney-client privilege.¹¹⁸³

The cost to run GTMO reached US\$150,000,000 annually, roughly US\$800,000 per detainee a year; approximately 30 times the cost of a civilian facility. The island location, temporary nature, and multiple commands with separate budgets drove up costs. It was manned by 1,850 personnel including, linguists, intelligence analysts,

¹¹⁷⁸ Carol Rosenberg, 'Gitmo Trials to get Limited Broadcast to US,' *Miami Herald*, 27 September 2011

¹¹⁷⁹ Author Unknown, 'Cole Case Arraignment a New Guantanamo Chapter,' *AP*, 9 November 2011

¹¹⁸⁰ Rosenberg, 'Alleged USS Cole bomber Nashiri faces Guantanamo war court,' *Miami Herald*, 9 November 2011

¹¹⁸¹ Ben Fox and Adam Goldman, 'Proposed Gitmo Rule Change Sparks Backlash,' *AP*, 28 December 2011

¹¹⁸² Author Unknown, 'Guantanamo detainees mail being read,' UPI, 2 November 2011

¹¹⁸³ Author Unknown, 'Guantanamo Leader Signs Order Opposed By Lawyers,' *AP*, 28 December 2011

federal agents, and contract labourers. Satellite television with sports, news, religious programming, and Arabic soap operas were made available to cooperative detainees. The library expanded to 24,000 books, videos, and magazines, and plans for another soccer field were announced. Detainees consumed up to 4,500 calories a day of food.¹¹⁸⁴

Conclusion

The GTMO detention facility was hastily constructed to hold detainees captured in Afghanistan during phase one of the HDC. As OEF continued, a long-term detention centre was established according to phase two of the HDC to correct mistakes made early in detention operations. As old and new doctrine collided, the situation became a perfect storm of confusion. The FBI, the military, the intelligence community, and others involved were tasked with competing missions (based on the two ideological camps) with unclear legal and operational guidance that changed and evolved as the mission progressed. While there were many successes, overall human resources with the appropriate skill sets were inadequate to accomplish all the assigned missions. Unskilled, well-meaning, personnel attempted to help, but often fell short. CENTCOM focussed only on the tactical and operational detention mission in Afghanistan and ignored the strategic interrogation mission they had pushed off to SOUTHCOM.

Under General Hood, corrections were made to detainee handling at GTMO, corresponding to the third phase of the HDC, and operations began to run more efficiently. Lessons learned from mistakes made at Abu Ghraib were applied to GTMO including suggestions from 12 major detention operations investigations. Despite President Obama's 2008 campaign vow to close the facility, Congress and the American public supported keeping it open to serve as the strategic detention facility for GWOT detainees.

¹¹⁸⁴ Author Unknown, 'Gitmo Bill is \$800k per Detainee Annually,' *Miami Herald*, 10 November 2011

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Whenever we have, perhaps, taken expedient measures, they have turned around and bitten us in the backside . . . Abu Gharaib and other situations like that are non-biodegradable. They don't go away. The enemy continues to beat you with them like a stick . . .

- Former CENTCOM Commander General David Petraeus¹¹⁸⁵

The war will be won through HUMINT. Detention and Intel are key to HUMINT. They must work together; be merged.

- MG Douglas Stone Commander TF-134 Detention Operations¹¹⁸⁶

Introduction

This chapter will discuss the 2003 US invasion of Iraq and subsequent detention operations. It will cover the tenure of each detention operations commander throughout the stages of the Historic Detention Cycle (HDC) as they unfolded during Operation Iraqi Freedom (OIF).

Detention operations in Iraq mostly followed phase one from the conventional military perspective. Most the detainees were classified as prisoners of war with a smattering of foreign fighter's mixed in who were classified as enemy combatants. After the defeat of the Saddam government and his conventional military and security forces, the insurgency set in and gravely affected detention operations in HDC phase two where US forces struggled to move from a convention mindest to an irregular-counterinsurgency, counterterrorism mindset. The learning curve was steep. Phase two was a watershed for detention operations not only in Iraq but for the entire DOD as the events at Abu Ghraib prison impacted the GWOT effort at all levels of war; strategic, operational, and tactical, and greatly influenced the local Iraqi population, the US

¹¹⁸⁵ Jonathan Martin, 'Petraeus: Afghanistan initial salvo,' *Politico*, 21 February 2010

¹¹⁸⁶ Douglas Stone, Author Interview, Arlington, VA, 10 March 2009

population, and international opinion. In phase three and four of the HDC, the US made dramatic changes to detention policy as insurgency swept the country. USMC General Douglas Stone catalysed the most arduous changes in detention operations; the policy of detain/hold/release was changed to detain/segregate/hold/rehabilitate/release. Stone's strategy likely saved the entire surge campaign from collapsing as detention operations reached a violent climax in spring 2007. In the fifth phase of the HDC, US operations transitioned to Operation New Dawn, the process of collecting end of conflict lessons learned were recorded and US forces prepared for complete withdrawal in December 2011 according to the status of forces agreement (SOFA) signed in December 2008 by President Bush.

Historical Context

On 27 November 2001, before the fall of the Taliban in Afghanistan, the SECDEF directed CENTCOM to create a plan for regime change in Iraq.¹¹⁸⁷ This directive was in line with the spirit of US policy, Public law 105-338,¹¹⁸⁸ signed by President Clinton in 1998 that codified the elements of the Iraq Liberation Act of 1998:¹¹⁸⁹

It should be the policy of the [US] to support efforts to remove the regime headed by Saddam Hussein from power in Iraq and to promote the emergence of a democratic government to replace that regime.¹¹⁹⁰

While this law did not directly call for invasion, it clarified US policy and authorised a host of US supported activities including military training and funding for anti-*Ba'athist* groups.¹¹⁹¹

As initial combat operations against the Taliban wound down, the Pentagon reviewed options for an invasion of Iraq. The OPLAN 1003V for the invasion of Iraq

¹¹⁸⁷ Nora Bensahel, 'After Saddam: Prewar Planning and the Occupation of Iraq,' *Rand*, (Arlington, VA: Rand, 2008), p. 6

¹¹⁸⁸ *Iraq Liberation Act of 1998*, Public Law No: 105-338, 5 September 1998

¹¹⁸⁹ *Ibid.*

¹¹⁹⁰ *Ibid.*

¹¹⁹¹ *Ibid.*

and defence of the Arabian Peninsula¹¹⁹² had been updated for Operation Desert Fox in 1998¹¹⁹³ and called for an invasion force of 500,000.¹¹⁹⁴ In 1999, then-CENTCOM Commander, General Anthony Zinni, conducted Desert Crossing, a war game for the invasion of Iraq and post Saddam conditions.¹¹⁹⁵ The result showed regime change did not guarantee stability, Iran would prove to be a challenge, ethnic tensions would ensue, and up to 300,000 US troops would be needed for the operation.¹¹⁹⁶ A month before the invasion, Congress asked US Army Chief of Staff General Erik Shinseki how many troops would be needed. He answered:

. . . [S]everal hundred thousand soldiers . . . would be required to stabilize Iraq after an invasion. We're talking about post-hostilities control over a piece of geography that's fairly significant, with the kinds of ethnic tensions that could lead to other problems . . . And so it takes a significant ground force presence to maintain a safe and secure environment, to ensure that people are fed, that water is distributed, all the normal responsibilities that go along with administering a situation like this.¹¹⁹⁷

An experienced combat veteran wounded in Vietnam, Shinseki understood what would be required to occupy a country and engage in counterinsurgency and counterterrorism operations.¹¹⁹⁸

On 16 October 2002, congress issued the Authorisation for Use of Military Force against Iraq.¹¹⁹⁹ Four days later, Saddam Hussein granted amnesty to 60,000¹²⁰⁰ criminals, virtually emptying the prisons and hoping to build support in case of a US

¹¹⁹² *OPLAN 1003V*, Pentagon, Washington, DC, 2003

¹¹⁹³ Tommy Franks, *American Soldier*, (NYC: Harper-Collins Publishers, 2004), p. 329

¹¹⁹⁴ Bob Woodward, *Plan of Attack*, (NYC: Simon & Schuster, 2004), pp. 36-37

¹¹⁹⁵ General Anthony Zinni, Desert Crossing After Action Report, CENTCOM, 30 June 1999, p. 3,

¹¹⁹⁶ *Ibid*, p. 10

¹¹⁹⁷ Thom Shanker, 'New Strategy Vindicates Ex-Army Chief Shinseki', *NYT*, 12 January 2007

¹¹⁹⁸ Erik Shinseki, Veterans Affairs Official Biography, Current as of 14 February 2010

¹¹⁹⁹ *Authorization for use of Military Force Against Iraq Resolution of 2002*, Joint Resolution, 16 October 2002, Public Law 107-243 [H. J. RES. 114], 107th CONGRESS

¹²⁰⁰ Dobie McArthur, Senior Advisor for Detainee and Prisoner Issues, *Information Memo: SUBJ. - Analysis of Detention Operations to the Administrator [Paul Bremer]*, 22 March 2004, Coalition Provincial Authority (CPA) – Baghdad, Iraq, p. attachment 1

invasion;¹²⁰¹ only those convicted of spying for the US or Israel were kept in custody.¹²⁰²

The original invasion was tentatively scheduled for October 2002. CENTCOM war planners felt the mission in Afghanistan was over and they could focus on Iraq.¹²⁰³ Bush made it clear he wanted no stretching of the intelligence to launch the invasion,¹²⁰⁴ but CIA director George Tenet assured him the case for WMDs was a ‘slam dunk’, although he denied saying this in his 2007 memoirs.¹²⁰⁵ The July 2004 Senate report on pre-war Iraq intelligence clearly showed the intelligence analysis was ‘stretched’ to support the assessment.¹²⁰⁶ As the drums of war continued to beat towards an Iraq invasion, President Karzai asked that Afghanistan not be forgotten and said the US must maintain a military force in his country until the terrorists were defeated. He reached out to the Iraqi people and said he wished for them to be free and to have a better life.¹²⁰⁷

The CENTCOM and Coalition Forces Land Component Command (CFLCC) OIF planners designed detention requirements for holding EPWs based on Iraqi units surrendering in place as they had done in the first Gulf War.¹²⁰⁸ The updated OPLAN 1003 V gave no additional interrogation and detainee guidance beyond what was found in the nine page Appendix 1 to Annex E titled ‘Enemy Prisoners of War (EPW), Retained Persons, Civilian Internees and other detainees’ dated 25 September 2002. It did not mention Iraq and looked exactly like the same annex from the Afghan-OEF war

¹²⁰¹ David Blair, ‘Saddam empties Iraq’s jails,’ *The Telegraph*, 21 October 2002

¹²⁰² Cameron Barr, ‘Jailbirds fly free in Iraq,’ *CS Monitor*, 22 October 2002

¹²⁰³ Sean Naylor, *Not A Good Day To Die*, (NYC: Penguin Group, 2005), p. 86

¹²⁰⁴ Woodward, p. 250

¹²⁰⁵ George Tenet, *At the Center of the Storm: My Years at the CIA*, (NYC: Harper Collins, 2007), p. 479

¹²⁰⁶ *Report of the Select Committee on Intelligence on the U.S. Intelligence Community’s Prewar Intelligence Assessments on Iraq*, US Senate, 9 July 2004

¹²⁰⁷ Kathleen Rhem, ‘Don’t Forget Afghanistan, Karzai Cautions U.S. Congress,’ *AFPS*, 26 February 2003

¹²⁰⁸ Donald Wright and Timothy Reese, ‘ON POINT II - Transition to the New Campaign: The United States Army in Operation IRAQI FREEDOM May 2003-January 2005,’ (Charleston, SC: CreateSpace, 2011), p. 3

plan.¹²⁰⁹ Planners estimated the US would hold between 16,000 and 57,000 EPWs during the invasion in 12 detention facilities.¹²¹⁰ The coalition never saw these numbers.

HDC Phase I: The Conflict Starts and Detainees Are Captured

General Paul Hill was the commander of the 800 MP brigade, a reserve unit that had performed well during detention operations in the 1990 Gulf War.¹²¹¹ From 2001, he led the unit through extensive training for their core EPW handling mission. Hill understood how to care for prisoners and support intelligence collection operations; he commanded the unit during the first two phases of the HDC.¹²¹²

On 19 March 2003, a coalition of 290,000 troops launched OIF Phase I with a CFLCC-directed attack on Baghdad.¹²¹³ Coalition forces poured into the country and seized key terrain quickly and entered Baghdad on 9 April.¹²¹⁴ Three MP brigades supported detention operations during the invasion: the 18 MP brigade attached to the First Armoured Division (1 AD) in Baghdad, the 220 MP brigade supported units all over the country, and the 800 MP brigade ran theatre detention operations.¹²¹⁵

Aboard the USS *Lincoln* on 1 May, President Bush announced the invasion was over, but the hard work of transitioning from Saddam to democracy would take time; the US would be there as long as necessary. The infamous sign hung aboard the ship titled ‘Mission Accomplished’ was meant as a tribute to the crew for the longest deployment ever for a ship of her class; it did not mean the effort in Iraq was over.¹²¹⁶ It became a strategic public relations messaging failure for the Bush administration and a hammer for the judicial-Geneva Conventions school-of-thought once the anti-Bush

¹²⁰⁹ Admiral A.T Church Report, *Review of Department of Defense Detention Operations and Detainee Interrogation Techniques*, (Washington DC: DOD, 7 March 2005), p. 261

¹²¹⁰ Douglas Pryer, *The Fight for the High Ground*, (Fort Leavenworth, KS: CGSC, 2009), p. 72

¹²¹¹ Jon Bilbo, *Enemy Prisoners of War (EPW) Operations During Operation Desert Storm* (Carlisle Barracks, PA: U.S. Army War College, 1992), pp. 40-1

¹²¹² Stacey Martin, ‘MPs hone enemy POW interment skills,’ *Army Reserve Magazine*, Fall 2001

¹²¹³ Franks, p. 433-436

¹²¹⁴ Allawi, p. 89

¹²¹⁵ Pryer, p. 73

¹²¹⁶ George Bush, *Decision Points*, (NYC: Crown Publishers, 2010), p. 257

camp got a hold of it and used it against the administration especially as the insurgency picked up steam and US casualties began to increase.

As the war progressed, manoeuvre units initially handled their own detainees in the field until they handed them off to corps or theatre level detention facilities. On 22 March 2003, the Third Infantry Division (3 ID) TF-EPW established a division detention collection point at Talil Airbase in Southern Iraq. This facility, named Camp Whitford, was the first semi-permanent US detention facility in Iraq and used by the 800 MP brigade to stage detainees for movement south.¹²¹⁷

The 513 MI Brigade sent two US interrogators from the 202 MI at Camp Udairi, Kuwait to the British detention facility Camp Freddy near Um Qasar in Southern Iraq in late March¹²¹⁸ to work with the British Joint Forward Interrogation Team (JFIT), part of the F Branch training wing of the Joint Services Intelligence Organization based out of Chicksands, Bedfordshire, United Kingdom.¹²¹⁹ They were the first US interrogators to work at the camp. The facility, mostly run by British reservists, was initially commanded by a Royal British Navy Lieutenant Commander.¹²²⁰ On 7 April, US forces assumed command of Camp Freddy from the British and turned it into the theatre internment facility (TIF) for the south.¹²²¹ Camp Freddy, which was a former *Ba'athist* propaganda radio station, was renamed Camp Bucca in honour of NYC fire marshal and Army Reserve Intel Warrant Officer Ronald Bucca, who died on 9/11 inside the WTC.¹²²² The British moved their interrogation operations to a British logistics base close to Basra called Shaiba and eventually operations were moved to the airport at

¹²¹⁷ Pryer, pp. 79-80

¹²¹⁸ Military #14, Author Interview, Tampa, Ashburn, VA, 2 January 2011

¹²¹⁹ Ian Cobain, 'Abuse claims lift cloak of secrecy over Britain's Iraq interrogation base', *Guardian*, 5 November 2010

¹²²⁰ Ian Cobain, 'Humiliate, strip, threaten: UK military interrogation manuals discovered', *Guardian*, 25 October 2010

¹²²¹ Gerry Gilmore, 'Enemy POWs Captured in Iraq Are Getting Good Treatment,' *AFPS*, 9 April 2003

¹²²² Paul Holton, *Saving Babylon: The Heart of an Army Interrogator in Iraq*, (Provo, UT: Perihelion Press, 2005), p. 50

Basra until the JFIT was close down at the end of 2008.¹²²³ Accusations of prisoner abuse by British Colonel Tim Collins were sensationalized in the press and ultimately proved incorrect¹²²⁴ but prisoner abuse at the JFIT and by other British forces would hamper their mission just as it would the US in the coming years.¹²²⁵

When the 513 went home, the 323 MI from the Maryland National Guard and the 300MI from the Utah National Guard took over operations at Camp Bucca.¹²²⁶

North of Basra, TF-EPW established several temporary sites, one at Life Support Area Bushmaster near Najaf and another at Camp Dogwood near Iskandaria. On 1 May, the detention and interrogations operations settled at Baghdad International Airport (BIAP) and opened Camp Cropper.¹²²⁷ Smaller detention centres fed into either Bucca in the south or Cropper in the north during the first part of the war.¹²²⁸

Out west, thousands of US SOF and Special Mission Unit (SMU)¹²²⁹ soldiers along with British and Australian Special Air Service (SAS) entered Iraq via Saudi Arabia and Jordan.¹²³⁰ Some under SOF General Dell Dailey in Saudi Arabia¹²³¹ and some under Qatar-based General Gary Harrell¹²³² staged in various bases in Jordan as part of JTF-West under General Jonathan Graton.¹²³³ Australian and British SAS were under the 23 March 2003 Trilateral [detention] Arrangement signed at Camp Al-Sayliyah, Doha that allowed Australian and British forces to turn over their prisoners to US custody if necessary.¹²³⁴

¹²²³ Cobain, 'Abuse claims lift cloak of secrecy over Britain's Iraq interrogation base'

¹²²⁴ Tim Collins, *Rules of Engagement: A Life In Conflict*, (London, UK: Headline, 2005), pp. 305 344

¹²²⁵ Ibid.

¹²²⁶ Military #14 Interview

¹²²⁷ Pryer, p. 80

¹²²⁸ Wright and Reese, p. 3

¹²²⁹ Franks, p. 592

¹²³⁰ Ibid., p. 433

¹²³¹ Ibid., p. 452

¹²³² Ibid., pp. 434, 452

¹²³³ William Arkin, 'Keeping Secrets in Jordan,' *WP*, 16 November 2005

¹²³⁴ Gemma Namey, 'Australia's detention, custody and transfer policy in Afghanistan and Iraq,' *Public Interest Advocacy Centre*, Site Accessed 26 November 2011

Units from the Florida National Guard staged at the Prince Hassan Air Base, the former H-5 pumping station,¹²³⁵ quietly breached the border between Jordan and Iraq on 19 March 2003 allowing SOF soldiers to move covertly into Iraq.¹²³⁶ Once the invasion started, they moved into the H-2 airfield inside Iraq east of Al-Rutbah to support a hasty field detention site as units which operated in Western Iraq, brought in their detainees. When they finished with them, they either released them or flew them down south to a larger facility. In May and June, Captain Shawn Martin of the 3 ACR based in Al-Rutbah, staged several mock shootings of detainees during interrogations. He and one other soldier were court-martialled in 2005 for their actions.¹²³⁷ In August 2003, then Lieutenant Colonel Allen West, and now a former Florida congressman, conducted a mock execution of a detainee in his battalion's custody. West was not court martialled, but fined US\$5,000 and immediately retired.¹²³⁸

During OIF Phase I, the 800th MP Brigade ran theatre level detention operations with eight MP battalions. One battalion managed the Baghdad Central Confinement Facility (BCCF) at the old Abu Ghraib prison, one battalion managed the *Mujahedeen-e-Khalq* (MEK) Camp Ashraf facility, two battalions ran Camp Bucca, one battalion ran Camp Whitford, one battalion ran the HVD centre at Camp Cropper, one battalion ran the Al-Diwaniya prison, and one battalion helped managed prisons and jails alongside Iraqi guards.¹²³⁹ Because the invasion ended so quickly and nobody realised an insurgency was imminent, reserve MP units scheduled to rotate into Iraq were demobilised.¹²⁴⁰

During OIF Phase I, detention operations mostly dealt with the Iraqi military but hundreds of foreign fighters who streamed in across the Syrian border were also

¹²³⁵ Prince Hassan Air Base – H5, <http://www.rjaf.mil.jo>, Accessed 24 November 2011

¹²³⁶ Lindsey Jones, 'Berm to berm: 2-124th leads the way,' *Florida Guard News*, 13 September 2010

¹²³⁷ John Lumpkin, 'Officers staged mock executions,' *AP*, 18 May 2005

¹²³⁸ Deborah Sontag, 'The Struggle For Iraq: Interrogations; How Colonel Risked His Career By Menacing Detainee and Lost,' *NYT*, 27 May 2004

¹²³⁹ Pryer, pp. 73-74

¹²⁴⁰ Ibid.

captured. More than 7,000 prisoners, including 3,781 EPWs (and the remainder civilians) were released from Camp Bucca by 9 May.¹²⁴¹ EPWs were paroled after signing a pledge not to fight against the coalition. They had to agree to only perform administrative or medical duties at their military units. They were also required to carry their parole documents with them. With the regime gone, these soldiers, including many Shiite conscripts, just went home.¹²⁴²

The coalition forces were so overwhelming, most of the Iraqi Army chose to go home rather than become EPWs.¹²⁴³ In April, eight MI battalions of interrogators and analysts sat in Kuwait and waited for a mission inside Iraq. Only one battalion had been assigned a mission; the other battalions' officers scrambled to find missions for their units.¹²⁴⁴ Ten of the 17 MI battalions in theatre eventually went home.¹²⁴⁵

The most critical battalion to leave was the Middle East-focussed 513MI.¹²⁴⁶ When it headed stateside in June, the relief for their MP Company that also left with the 513 MI, did not arrive until a few days after they left. Detainees were locked in their cells alone for three days with bottled water and a nearby unit was given the keys to deliver to the new MP Company when they arrived.¹²⁴⁷ Bucca, Cropper, and the other facilities needed these important intelligence assets as they sorted through thousands of detainees that entered the US detention system; they should not have been sent home.

HDC Phase II: Mistakes are made in Detainee Handling and Incarceration

With the declaration of the cessation of hostilities on 1 May, CENTCOM created CJTF-7. The US Army V Corp headquarters provided leadership for the new TF under General Ricardo Sanchez to control all coalition military operations in Iraq starting on

¹²⁴¹ Author Unknown, '200 foreign fighters in Iraq could face tribunals,' NYT, 9 May 2003

¹²⁴² Kathleen Rhem, 'Coalition Holds 2,000 Prisoners in Umm Qasr; 7,000 Others Released,' *AFPS*, 8 May 2003

¹²⁴³ Ali Allawi, *The Occupation of Iraq*, (New Haven, CT: Yale University Press, 2007), p. 89

¹²⁴⁴ Torin Nelson, Author Interview, SLC, UT, 3 March 2009

¹²⁴⁵ Pryer, p. 70

¹²⁴⁶ Military #19, Author Interview, Purcellville, VA, 28 February 2009

¹²⁴⁷ Ibid.

14 June 2003.¹²⁴⁸ This coincided with the 9 May appointment of the head of the Coalition Provincial Authority (CPA), the new Iraqi government in embryo, of Ambassador Paul Bremer.¹²⁴⁹ Established 16 April by General Tommy Franks, the CPA provided a ‘whole of government’ approach for the post-Saddam era and replaced the short-lived Office of Reconstruction and Humanitarian Assistance (ORHA). With the total collapse of the Iraqi government, ORHA had no Iraqi partner for a short-term turnover.¹²⁵⁰

Former *Ba’ath* party employees, with the exception of the Ministry of Oil protected by the US, had methodically destroyed all files, records, documents, databases, and organisational charts, and even burned down some of the ministries to make the process of creating a new government more difficult. There were no paper trails to follow.¹²⁵¹ The US military had no government to turn EPWs over to and was not prepared to detain criminals and other detainees.¹²⁵²

Units such as the 204 MP Company, 519 MP Battalion out of Fort Polk, Louisiana, entered Baghdad on 20 April and were given extensive responsibilities to restore order and care for detainees who were mostly criminals. They trained many US units in how to conduct detainee operations. The 519 MPs, stationed at Camp Victory, was also responsible for a jail next to their base that contained approximately 300 men crammed into a space for 75. US units would drop off their detainees at the jail rather than take them out to the detention facility at the Baghdad airport. Most were criminals caught looting, but no evidence or weapons were dropped off with them.¹²⁵³

¹²⁴⁸ Pryer pp. 67, 74

¹²⁴⁹ Paul Bremer, *My Year in Iraq*, (NYC: Threshold, 2006), pp. 12-13

¹²⁵⁰ James Dobbins, *Occupying Iraq: A History of the Coalition Provisional Authority*, (Arlington, VA: Rand, 2009), pp. 6-7, 11

¹²⁵¹ Allawi, pp. 115-116

¹²⁵² Pryer, p. 72

¹²⁵³ Major Jay Burns, USA, Interview by *Operational Leadership Experiences Project Team with Combat Studies Institute*, 18 March 2008. Fort Leavenworth, Kansas. [Digital recording stored on CD-ROM at Combined Arms Research Library, Fort Leavenworth, Kansas.]

By the time General Hill transferred command of the 800 MP Brigade to General Janice Karpinski on 30 June 2003, his unit was undermanned and under resourced to accomplish the growing detention mission. Karpinski, also a reservist and recently frocked one star general officer was the first female general officer to lead troops in a combat zone. She commanded during phase two of the HDC, the most critical phase of detention operations in the Iraq campaign. She was put in charge of 15 detention facilities and only had 83 prison experts in her command.¹²⁵⁴ Karpinski allocated her scarce resources poorly; she put one battalion in charge of 7,000 detainees at Abu Ghraib and one battalion in charge of 100 HVDs at Camp Cropper. One battalion, by doctrine, should manage 4,000 detainees.¹²⁵⁵ Additionally, only a portion of her brigade was trained to deal with detainees; the rest did other MP missions.¹²⁵⁶

Detention operations became a critical mission for all tactical units as they gathered intelligence about the growing insurgency. Units at every company, battalion, and brigade that did not have organic (their own) MPs and MI personnel created their own detention tactics, techniques, and procedures (TTPs) and hasty (field) detention sites.¹²⁵⁷

Shortly after taking over the CPA, Ambassador Bremer issued several directives that had a profound effect on overall detention operations. His first directives on 16 May stated the CPA was the new Iraqi government¹²⁵⁸ and officially dissolved the *Ba'ath* party.¹²⁵⁹ In effect, this made the US an occupier and upset many Iraqis who had hoped for a quicker turnover; they did not understand that under international law, securing the country was a necessary first step before handover to a new Iraqi

¹²⁵⁴ Jake Cuttler, 'Gen. Karpinski critiques Iraq War,' *The Wesleyan Argus*, 23 February 2007

¹²⁵⁵ Taguba Report, pp. 36-38

¹²⁵⁶ Wright and Reese, p. 4

¹²⁵⁷ *Ibid.*, p. 5

¹²⁵⁸ 'Regulation Number 1,' *Coalition Provisional Authority*, 16 May 2003, Baghdad, Iraq

¹²⁵⁹ 'De-Ba'athification Of Iraqi Society,' *Coalition Provisional Authority Order Number 1*, 16 May 2003, Baghdad, Iraq

government could occur.¹²⁶⁰ His next directive, on 23 May, officially dissolved the military and intelligence services of the former Iraqi government.¹²⁶¹ The orders effectively created 60 per cent unemployment by preventing one million people who previously worked in the government, universities, justice, hospitals, and communications from returning to work.¹²⁶²

Iraq scholar William Polk chided Bremer for failing to follow the plan created by his ORHA predecessor Jay Garner to use the Iraqi military as a labour corps.¹²⁶³ Bremer argued that the military had dissolved itself, and the old Iraqi Army with a minority *Sunni* officer corps and majority *Shiite* enlisted conscripts were not going to reassemble and report for duty.¹²⁶⁴

In addition to the criminals Saddam released in autumn 2002, many disgruntled citizens had a lot of time to fight the coalition in Iraq. Ironically, after the dissolution, the CPA paid the salaries of former military personnel, who used those monies to fund insurgent activities against the coalition.¹²⁶⁵

As the detention mission grew, the CJTF-7 commander and staff realised they needed to assert greater control over a system that was developing in an uncoordinated fashion. On 28 June, Sanchez issued an order explaining the legal status of civilian and criminal detainees and mandated that all detention facilities adhere to the Third and Fourth Geneva Conventions that defined protections for EPWs and civilians. Sanchez assigned overall responsibility for the detainee mission to the 800 MP Brigade and gave the commander of the 205 MI Brigade similar oversight over interrogation operations.¹²⁶⁶

¹²⁶⁰ Alan King, *Twice Armed*, (Osceola, WI: Zenith Press, 2006), p. 86

¹²⁶¹ 'Dissolution of Entities,' *Coalition Provisional Authority Order Number 2*, 23 May 2003, Baghdad, Iraq

¹²⁶² General Ricardo Sanchez, *Wiser in Battle*, (NYC, Harper, 2008), p. 184

¹²⁶³ William Polk, *Understanding Iraq*, (NYC: Harper Collins Publishers), 2005, p. 198

¹²⁶⁴ Bremer, *My Year in Iraq*, pp. 32-33

¹²⁶⁵ McArthur Interview.

¹²⁶⁶ Wright and Reese, pp. 7-8

In July, the first four soldiers accused of abusing prisoners in Iraq were charged. On 12 May at Camp Bucca, the MPs punched, kicked and broke detainees' bones as they got off a bus.¹²⁶⁷ CJTF-7 staff formed the Detention Working Group chaired by Staff Judge Advocate (SJA) Colonel Marc Warren to get a handle on the situation; no provost martial general (PMG) was yet in country. The group met weekly to deal with the growing detainee problem and held three detention summits between July and December 2003.¹²⁶⁸

During the 19 August detention summit, participants from the 800 MP Brigade, the CJTF-7 J-2, and SJA presented information on detainee record databases, facilities, and a new review process that standardised the system of evaluating detainee legal status and provided for appeal and release. By the end of the summer, CJTF-7 had assigned 10 soldiers from its legal staff to Abu Ghraib in an attempt to ensure all detainees had a review of their legal status within 72 hours of arrival at the facility.¹²⁶⁹

On 24 August 2003, CJTF-7 issued the first major detention guidance beyond the individual and unit training of MPs and MI units. The guidance, based on the summer's detainee summits, gave the first SOPs on how to deal with detainees potentially guilty of war crimes, preservation of evidence for crimes, release guidance, support to the Baghdad criminal court, processing civilian internees, who could be detained, and under what international authorities the military conducted detention operations. The order was written in a way that units could apprehend whomever they wanted. It stated:

Capturing units will not detain persons unless there is a reasonable belief that the person is or has engaged in criminal activity; Possess information important to, or

¹²⁶⁷ Author Unknown, 'Four U.S. soldiers charged with abusing Iraqi prisoners,' *USA Today*, 26 June 2003

¹²⁶⁸ Wright and Reese, p. 8

¹²⁶⁹ Ibid.

interferes with, coalition mission accomplishment; is on a list of persons wanted for questioning, arrest or detention by coalition forces; or is an enemy combat.¹²⁷⁰

To assist CJTF-7 with their detention crisis, Undersecretary of Defence for Intelligence Stephen Cambone sent General Geoffrey Miller from JTF-GTMO to conduct an assessment of detention operations.¹²⁷¹ From 31 August to 9 September, Miller and 17 current and former GTMO-assigned personnel toured detention facilities in Iraq and made recommendations to synchronise and improve operations. They recommended the acquisition of more detention and intelligence resources, the creation of analyst-interrogator-linguist ‘Tiger Teams’, and the implementation of a plan to get MPs and interrogators working more closely.¹²⁷²

Miller visited every US facility and saw no signs of abuse. He understood his environment at GTMO was different than in Iraq, but made recommendations in hopes of helping the Iraq mission.¹²⁷³ Differing conditions and resources relative to the MP and MI resources in GTMO and Iraq was made clear in the Taguba report; personnel in Iraq generally considered Miller’s advice unrealistic.¹²⁷⁴

In November, the PMG of the Army, Major General Donald Ryder, led a team of MP and detention experts to Iraq at the request of CJTF-7 to identify problems, recommend solutions, and identify the resources needed to correct deficiencies. The team conducted 32 site visits and offered observations and recommendations on detention systems management, detainee movement, segregation and accountability, command and control, integration of military detention with CPA detention, transition to an Iraqi run system, detainee health care, court integration and docket management

¹²⁷⁰ FRAGO 749, Intelligence and Evidence-Led Detention Operations Relating to Detainees,’ *CJTF-7 OPORD 03-036*, 24 August 2003

¹²⁷¹ Yee, p. 199

¹²⁷² General Geoffrey Miller, *Assessment of DOD Counterterrorism Interrogation and Detention Operations in Iraq*, (Baghdad, Iraq: DOD, 9 September 2003), pp. 6-7, 9

¹²⁷³ [Iraq] *Detainee Operations Briefing with Major General Geoffrey Miller*, 4 May 2004, Office of the Assistant Secretary of Defense for Public Affairs, DOD, Washington, DC

¹²⁷⁴ Taguba Report, p. 8

for criminal detainees, and detainee legal services, databases and records.¹²⁷⁵ A growing rift between General Sanchez, Ambassador Bremer, and a host of other Ambassadors working in Iraq did not help the situation.¹²⁷⁶ Many of these issues were cited as problems in subsequent detention investigations.

On 1 October 2003, CJTF-7 consolidated the majority of detention operations at the Abu Ghraib prison.¹²⁷⁷ The prison, renamed the Baghdad Central Correctional Facility (BCCF), had been built by the British in the 1960s and was used by Saddam's *Ba'ath* party as a prison, torture, and execution centre,¹²⁷⁸ complete with wood chippers in which to place detainees in feet-first.¹²⁷⁹ In June, as the prisoner population began to swell, CPA Justice Ministry Senior Advisor Judge Donald Campbell scoured the country for other suitable Iraqi prisons, but none were useable.¹²⁸⁰

Bremer had transferred the Iraqi prison system to the Ministry of Justice away from the Ministry of Labour, Social Affairs, and the Interior, which had been notoriously brutal.¹²⁸¹ He laid out new rules for the prison system; among the most important were humane treatment for all, official registration, segregation based on crimes, and no ethnic and religious discrimination.¹²⁸² Campbell, who said there was no other facility available in the country, advised Bremer to reopen Abu Ghraib as a main prison in their judicial detention system.¹²⁸³ The other large Baghdad prison, Khan Bani Sakh, had been completely destroyed by looters and was not useable.¹²⁸⁴

¹²⁷⁵ General Donald Ryder, USA, PMG, *CJTF-7 Detention Operations assistance Visit*, (Washington DC: DOD, 6 November 2003)

¹²⁷⁶ McArthur Interview.

¹²⁷⁷ Pryer, p. 83

¹²⁷⁸ Phillip London, *Our Good Name*, (Washington, DC: Regnery Publishing, 2008), pp. 645-646

¹²⁷⁹ McArthur Interview.

¹²⁸⁰ Bremer, pp. 129, 133-134

¹²⁸¹ 'Management of Detention And Prison Facilities,' *Coalition Provisional Authority Order Number 10*, 5 June 2003, Baghdad, Iraq

¹²⁸² 'Management of Detention and Prison Facilities,' *Coalition Provisional Authority Memorandum Number 2*, 8 June 2003, Baghdad, Iraq

¹²⁸³ Bremer, pp. 133-134

¹²⁸⁴ Sanchez, pp. 221-222

In the summer, as the 800MP expanded the facility, General Karpinski was warned not to use Abu Ghraib. She was expressly educated on its bloody history and advised to build a new prison in the desert away from the *Sunni* neighbourhood where the prison was located. Karpinski argued that it had hardened doors and was the best available place.¹²⁸⁵ She agreed with CJTF-7's head intelligence officer, General Barbara Fast, that Abu Ghraib's central location was convenient for all the divisions to drop off their prisoners.¹²⁸⁶ Another factor that kept Abu Ghraib open was the Kuwait government; they did not want the only major detention facility to be Camp Bucca on their border.¹²⁸⁷

In October 2003, only 90 MPs were in charge of 7,000 detainees.¹²⁸⁸ Abu Ghraib was a complete resource failure with too few MPs, too few MI, and not enough money to build the correct facility in the correct location.¹²⁸⁹ Bremer was reluctant to reopen Abu Ghraib but said if it could be brought up to international penal standards and the execution rooms were to be set-aside as a museum to remind people of Saddam's brutality, it could be used.¹²⁹⁰

In August, Captain Carolyn Wood of the 513 MI Brigade rotated to Iraq to run the ICE at the Joint Interrogation and Debriefing Centre (JIDC) at Abu Ghraib, a role similar to the one she served in Afghanistan. She recommended the creation of a hard site to house only the detainees deemed to have intelligence value. Wood researched approved interrogations methods and came up with a SOP, which was approved by her commanding officers, Colonel Thomas Pappas, the 205 MI Brigade commanding officer and Lieutenant Colonel Steve Jordan, the head of the JIDC.¹²⁹¹

¹²⁸⁵ Military #19 Interview.

¹²⁸⁶ Nelson Interview.

¹²⁸⁷ Military #14 Interview.

¹²⁸⁸ Pryer, p. 87

¹²⁸⁹ Military #19 Interview.

¹²⁹⁰ Bremer, p. 134

¹²⁹¹ General Donald Ryder, Provost Marshal General, *CJTF-7 Detention Operations assistance Visit*, (Washington DC: DOD, 6 November 2003), pp. 28-29, 34

By December 2003, four MP battalions had rotated home, leaving 11,699 detainees in the custody of the remaining four MP battalions.¹²⁹² Resources to care, feed, house, interrogate, and segregate detainees did not exist in country. Tactical commanders in the field were hungry for intelligence on the growing insurgency and hoping to reduce violence, actually exacerbated the situation by rounding up everyone in cordon-and-search sweeps across Iraq. The biggest offender was General Ray Odierno, commander of the 4 ID, who captured some ten thousand military aged males in his one-year tour.¹²⁹³ When General Barbara Fast complained about Odierno's tactics he told her he did not care; he did not want detainees released.¹²⁹⁴ The detention system simply could not hold all of the detainees that were coming into and it was only a matter of time before it broke.

Retired Army Colonel Stu Herrington, who conducted detention operations in Vietnam, was brought in to assess the detention and intelligence collection mission, as he had for General Dunlavey at GTMO in 2002. His report stated that Odierno's tactics had a negative effect on operations.¹²⁹⁵ It was estimated that more than 70 per cent of detainees were arrested by mistake or had no intelligence value.¹²⁹⁶ Something the judicial-Geneva Conventions camp accused the Bush administration of with the detainees taken initially in Afghanistan. In 2010, Odierno, then-head of US forces in Iraq, admitted the US was unprepared to handle large numbers of detainees in 2003,¹²⁹⁷ but he did not concede his tactics of detaining all military aged males were part of the problem.

¹²⁹² Pryer, p. 74

¹²⁹³ Thomas Ricks, *The Gamble, 2006-2008*, (NYC: Penguin Press, 2009), p. 107

¹²⁹⁴ *Ibid.*, p. 239

¹²⁹⁵ Ricks, p. 108

¹²⁹⁶ Tara McKelvey, *Monsterring*, (NYC: Carroll and Graf, 2007), p. 15

¹²⁹⁷ Author Unknown, 'US leaves last "terror factory" in Iraq,' *IR PressTV*, 15 July 2010

As the insurgency raged and MP and MI resources waned, more contractors came into the country. Blackwater USA provided security for the CPA,¹²⁹⁸ companies like CACI provided interrogation support,¹²⁹⁹ and Titan and World Wide Language Resources provided linguistic support.¹³⁰⁰ The mission required not only Arabic, but Kurdish and Farsi linguists as well; contractors were stationed throughout the country and even on the Iranian border in places like Forward Operating Base (FOB) Rough Rider near Mandali. These linguists supported the field detention sites, handling detainees before they were sent to the larger TIFs.¹³⁰¹

Reservist Torin Nelson, an experienced military interrogator, was hired by CACI and arrived at Abu Ghraib in mid-November. He was shocked by the security situation: the prison was in the heart of a *Sunni-Ba'athist* neighbourhood, apartments came right up to one of the prison walls, a large field with palm trees was along another wall, which allowed mortars to target the prison, and major roadways ran along the north and south walls. To go from their quarters to their workspaces, some interrogators walked in the open for a quarter mile with sniper positions clearly visible from the prison.¹³⁰²

Because of his interrogation experience, Captain Wood put Nelson on the day shift Team E, a group of 12 military interrogators and 12 contractor interrogators at the ICE, which dealt with the extremists.¹³⁰³ As he began to work with his counterparts, he realised many of the interrogators were not qualified. He complained of CACI's poor hiring and screening standards, something CACI denied.¹³⁰⁴

¹²⁹⁸ Jeremy Scahill, *Blackwater*, (NYC: Nation Books, 2007), p. 73

¹²⁹⁹ London, p. 208

¹³⁰⁰ Marvin Schroeder, Author Interview, Washington, DC, 9 March 2009

¹³⁰¹ Contractor #1, Author Interview, Tampa, FL, 1 April 2009

¹³⁰² Nelson Interview.

¹³⁰³ Ibid.

¹³⁰⁴ London, p. 208

To assist the troops on the ground, the US military produced a deck of cards of the 55 most wanted members of the *Ba'ath* party government.¹³⁰⁵ The ace of spades, Saddam Hussein, was still on the run. Card by card, the high-ranking officials were captured and detained.¹³⁰⁶ For exploitation and interrogation, they were sent to Cropper, the HVD detention camp at the Baghdad airport, run by the US Iraq Survey Group commanded by General Keith Dayton.¹³⁰⁷

In Tikrit, the 4 ID settled into Saddam's palace; he was from the nearby village of Al-Ouja. During summer 2003, a fluent Arabic speaking US Air Force Foreign Area Officer with a detailed understanding of how Arab tribes and families worked was assigned to a military unit based in Tikrit. He created a list of potential members of Saddam's family who would support Saddam in hiding. He narrowed the search to Saddam's maternal cousins, the Muslit brothers, who he grew up with. At the end of his tour, he handed the names to a fresh, inexperienced interrogator named Eric Maddox and told him to focus on the list and the Muslits.¹³⁰⁸

Maddox, who had just arrived in country, used the names to guide the 300 interrogations he conducted over the next five months. Supported by other interrogators and analysts, they built a complex organisational family tree of Saddam.¹³⁰⁹ Combined with other information from a variety of supporting units, Saddam Hussein was finally captured by US Special Forces on the evening of 13 December in a 600-man mission code named Operation Red Dawn.¹³¹⁰ Focus on the Muslit family had been the key.¹³¹¹

Saddam was initially treated as an EPW and interviewed by a joint CIA-FBI interrogation-analytical operation codenamed 'Desert Spider'. Beginning 7 February 2004, Lebanese-American FBI agent George Piro gained Saddam's trust and spent

¹³⁰⁵ Linda Kozaryn, 'Deck of Cards Helps Troops Identify Regime's Most Wanted,' *AFPS*, 12 April 2003

¹³⁰⁶ Kathleen Rhem, 'Tariq Aziz Brings Total of "Top 55" in Custody to 12,' *AFPS*, 25 April 2003

¹³⁰⁷ Transcript: Senate Hearing on Iraq Prison Abuse, *WP*, 19 May 2004

¹³⁰⁸ Military #11, Author Interview, Tampa, FL, 1 April 2009

¹³⁰⁹ Eric Maddox, *Mission: Black List #1*, (NYC: Harper Collins, 2008), pp. 80-81, 92, 254

¹³¹⁰ Jim Garamone, 'We Got Him - Bremer Announces Saddam's Capture,' *AFPS*, 14 December 2003

¹³¹¹ Maddox, pp. 12, 242

countless hours discussing many topics with him.¹³¹² Their twentieth and final interview was 1 May.¹³¹³ On 5 November 2006¹³¹⁴ Saddam Hussein was convicted in an Iraqi court and hanged 29 December.¹³¹⁵

The watershed moment for prisoner operations in Iraq, and arguably the GWOT, was the MP detainee abuse scandal at Abu Ghraib in autumn 2003.¹³¹⁶ In response to a detainee's attempt to shoot MPs with a smuggled gun, MPs stripped several detainees and humiliated them sexually. Initially, under questioning, the guards said they were just messing around; later, the MPs stated they had been ordered by MI to abuse the detainees. The detainees involved were never questioned.¹³¹⁷

On 13 January 2004, Army Specialist Joe Darby turned photos of the abuse (he had received from one of the abusers) in to Army investigators.¹³¹⁸ On 19 January, CJTF-7 General Sanchez ordered an investigation of the 800 MP Brigade. Major General Antonio Taguba, a CFLCC deputy commanding general, was selected to conduct the investigation.¹³¹⁹ On 20 January the media was informed of the investigation and that it was serious; no cover up was attempted.¹³²⁰ Sanchez said 'as the senior commander in Iraq, I accept responsibility for what happened at Abu Ghraib, and I accept as a solemn obligation the responsibility to ensure that it does not happen again'.¹³²¹

When the Army CID investigation started, all JIDC members were interviewed. Torin Nelson was questioned for three hours and his sworn statement was made a part

¹³¹² James Meek, 'How the FBI Broke Saddam,' *NY Daily News*, 26 June 2009

¹³¹³ George Piro, Interview Session # 20 With Saddam Hussein, (FBI Baghdad OPS Centre, Iraq: DOJ, 1 May 2004)

¹³¹⁴ Garamone, 'Bush Calls Saddam Verdict "Milestone," Thanks U.S. Service members,' *AFPS*, 5 November 2003

¹³¹⁵ Author Unknown, 'President Bush Statement on Saddam Hussein's Execution,' *AFPS*, 29 December 2006

¹³¹⁶ Christopher Graveline, and Michael Clemens, *The Secrets of Abu Gharaib Revealed*, (Dulles, VA: Potomac Books, 2010), p. 230

¹³¹⁷ Sanchez, pp. 276-277

¹³¹⁸ Graveline and Clemens, p. 33

¹³¹⁹ General Antonio Taguba, 'Taguba Report', AR 15-6, *Investigation of the 800th Military Police Brigade*, (Baghdad, Iraq: Coalition Forces Land Component Command, 26 February 2004), p. 21

¹³²⁰ Barbara Starr, 'Details of Army's abuse investigation surface,' *CNN*, 21 January 2004

¹³²¹ Transcript: Senate Hearing on Iraq Prison Abuse, *WP*, 19 May 2004

of the Taguba investigation. Nelson specifically named two individuals who used questionable techniques. Within 24 hours of his confidential sworn statement, it was leaked and he was warned to watch his back. One of the individuals, who had abused an Iraqi two star general, personally threatened him; Nelson contacted the in-country manager for CACI, who moved him to a secure location and eventually out of Iraq.¹³²² When the Taguba report was completed, Nelson, along with Darby, was listed as part of the group of eleven who blew the whistle on abuses at Abu Ghraib.¹³²³

On 29 February, General Taguba completed his investigation and submitted his final report 9 March.¹³²⁴ The findings were startling; US military officers in Iraq knew about major problems and did not stop them. Taguba was praised for his forthright investigation by some general officers and shunned by others. The CENTCOM Commander, General John Abizaid, told Taguba he would be personally investigated for his conclusions. General Miller, who he had known and worked with for years, would not look him in the eye, and Secretary Rumsfeld mocked him to his face on two occasions. Taguba's next major leadership assignment was cancelled and he was relegated to a Pentagon job in reserve affairs so he could be watched; he was eventually told to retire.¹³²⁵

On 1 April, General Karpinski's legal counsel submitted a rebuttal to the Taguba report and asked it be set aside for inaccuracies. The rebuttal noted the report relied on several individuals who were critical of her leadership and efforts while ignoring others who praised her for accomplishing things she was accused of not doing. Hers was an EPW brigade tasked to conduct a non-doctrinal mission and house Iraqi criminals and HVDs. She created an Iraqi Confinement Plan 15 June 2003 to accomplish the new mission, which she had been accused of failing to do. She had also been blamed for not

¹³²² Nelson Interview.

¹³²³ Taguba Report, p. 17

¹³²⁴ Ibid, p. 29

¹³²⁵ Seymour Hersh, 'The General's Report,' *New Yorker*, 25 June 2007

training her soldiers in the Geneva Conventions, but they had all had been trained in their regular MP instruction, again at their deployment sites, and again during their deployment. Karpinski's counsel also pointed to the fact it was her brigade soldiers who reported the abuse, itself evidence the training worked, albeit not for the small group of abusers. In response to Taguba's finding that she had incompetent leaders under her, she countered there was no replacement mechanism in the brigade at that time. In addition, she argued, she was severely undermanned and needed everyone to complete the expanding mission she had begun to do.¹³²⁶

Taguba's findings led to charges filed on 20 March against six soldiers who committed the abuses against the detainees.¹³²⁷ A seventh MP was charged 7 May at Fort Bragg, North Carolina.¹³²⁸ Karpinski, had been suspended as CO of the 800 MP Brigade, in January 2004,¹³²⁹ blamed the abuses on direction from intelligence officers.¹³³⁰ The Schlesinger investigation stated:

The panel concluded that contrary to speculation, the abuses detailed in the photos that flooded the world in April and May [2004] 'did not come from authorized interrogation, they did not come from seeking intelligence. They were "freelance" activities on the part of the night shift at Abu Ghraib . . . The panelists stressed there was no U.S. government policy of abuse.'¹³³¹

Karpinski was found guilty of dereliction of duty 5 May 2005 and reduced to the rank of Colonel; 27 other officers were punished for their roles in the scandal.¹³³² On 16 October 2006, eleven enlisted soldiers were sentenced for their parts in the abuse of the detainees

¹³²⁶ LTC Fred Taylor, Regional Defense Counsel, *Memorandum For Staff Judge Advocate, Coalition Forces Land Component Command, Camp Doha, Kuwait APO AE 09304, 1 April 2004, Subject: Rebuttal to AR 15-6 Investigation of the 800s' Military Police Brigade*

¹³²⁷ Jim Garamone, 'Military Accuses Six of Abusing Detainees in Iraq,' *AFPS*, 20 March 2004

¹³²⁸ Author Unknown, 'Female soldier in abuse photos charged,' *CNN*, 8 May 2004

¹³²⁹ Sewell Chan and Jackie Spinner, 'Guantanamo Bay chief takes over after shameful jail abuse,' *SMH*, 1 May 2004

¹³³⁰ Philip Shenon, 'Officer Suggests Iraq Jail Abuse Was Encouraged,' *NYT*, 2 May 2004

¹³³¹ James Schlesinger, *Final Report of the Independent Panel to Review DoD Detention Operations*, (Washington, DC: DOD, 24 August 2004), p. 5

¹³³² Moniz, 'Gen. Karpinski demoted in prison scandal'

at Abu Ghraib.¹³³³ The 800 MP would never lose the stain from its association with Abu Ghraib and on 16 June 2012 it was redesignated the 333 MP Brigade;¹³³⁴ they would quietly return to detention operations duty in Afghanistan in the autumn of 2012.¹³³⁵ The contractors involved and cited in Taguba's report faced years of legal proceedings; in June 2011 the US Supreme Court ruled they could not be sued by the Iraqi detainees.¹³³⁶ Although they could have had more training, nothing in their training was to blame for the sadistic abuses they participated in.

In a 1971 study funded by the US Office of Naval Research,¹³³⁷ Stanford University Professor Philip Zimbardo, conducted a ground-breaking prison experiment using 24 students as prisoners and guards. The study revealed how quickly the interaction between guards and prisoners deteriorated. The two-week study was cut short after six days when Zimbardo realised the emotional trauma and dehumanisation suffered by the 'prisoners' at the hands of the 'guards'. He stated: 'The key is this, once a prison has a veil of secrecy around it, which most do, it's just open for corruption . . . If you know nobody can[']t get in, nobody can know what you're doing'.¹³³⁸

Zimbardo showed how quickly humans become corrupted when they are in a position of authority over others. Nineteenth century American religious leader Joseph Smith similarly experienced harsh treatment by guards while imprisoned in Liberty, Missouri. He said: 'We have learned by sad experience that it is the nature and disposition of almost all men, as soon as they get a little authority, as they suppose, they

¹³³³ Author Unknown, 'Soldiers convicted in Abu Ghraib scandal,' *AP*, 16 October 2006

¹³³⁴ 333 Military Police Brigade, <http://www.tioh.hqda.pentagon.mil/Heraldry/ArmyDUISSICOA/ArmyHeraldryUnit.aspx?u=3969>, Accessed 14 July 2012

¹³³⁵ Spc. Kathryn Summerhill, '333rd Military Police Brigade bids farewell to family and friends', *DVIDS*, 23 August 2012

¹³³⁶ Author Unknown, 'Abu Ghraib Lawsuit Rejected by Supreme Court,' *AP*, 27 June 2011

¹³³⁷ *Stanford Prison Experiment FAQs*, Available at: <http://www.prisonexp.org/faq.htm>, Accessed 23 December 2011

¹³³⁸ Matthew Stannard, 'Stanford experiment foretold Iraq scandal', *San Francisco Chronicle*, 8 May 2005

will immediately begin to exercise unrighteous dominion'.¹³³⁹ Zimbardo labelled the guards' deviant behaviour the result of a 'Lucifer Effect'.¹³⁴⁰ Only effective training, sufficient resources, transparency, clear SOPs and TTPs, and strong leadership oversight can prevent what happened at Abu Ghraib; that was exactly what was missing.

In a February 2004 report, the ICRC had warned of detention problems and outlined major violations of the laws of war. Investigators conducted 29 visits to 14 internment facilities including: Camp Cropper, Al-Salihlyye, Tasferat and Al-Russafa prisons, Abu Ghraib, Umm Qasr, Camp Bucca, Tallil AB, Camp Condor, Camp Amarah, and the Field Hospital in Shaibah. The report detailed cases of detainee deaths, injuries, failure to inform families of arrest, physical or psychological coercion during interrogation, prolonged solitary confinement, seizure and confiscation of private property, exposure of detainees to dangerous tasks, and holding detainees in dangerous places where they were not protected from shelling.¹³⁴¹ CENTCOM leadership in Qatar claimed they didn't see the report until May 2004.¹³⁴²

The ICRC highlighted incidents of detainee abuse including a 30 April case when US forces stormed the home of a Baghdad businessman, Khraisan Al-Abally, whose father was mistaken for Izzat Ibrahim Al-Duri, a senior *Ba'ath* party leader who was wanted by the coalition. Khraisan, along with his 80-year-old father, was taken into US custody at the Baghdad airport. Khraisan was forced to kneel naked with his hands and feet bound with a bag covering his head, forced to stare into a strobe light while loud music was blasted at him for eight days. When he was freed, he filed a complaint

¹³³⁹ Joseph Smith, *The Doctrine and Covenants - Section 121:39*, (SLC, UT: The Church of Jesus Christ of Latter-day Saints, 1989), p, 242

¹³⁴⁰ Philip Zimbardo, *The Lucifer Effect*, (NYC: Random House, 2008), p. 5

¹³⁴¹ *Report Of The International Committee Of The Red Cross (ICRC) On The Treatment By The Coalition Forces Of Prisoners Of War And Other Protected Persons By The Geneva Conventions In Iraq During Arrest, Internment And Interrogation*, February 2004

¹³⁴² Transcript: Senate Hearing on Iraq Prison Abuse, WP, 19 May 2004

with US military authorities in Baghdad who said they would investigate. These same techniques were documented later at Camp Nama.¹³⁴³

These allegations of abuse were exactly what the judicial-Geneva conventions camp feared would occur if the intelligence-collection camp was allowed to conduct operations unchecked. Their greatest fears came to fruition.

USMC Reservist Dobie McArthur, an Arabic-speaking intelligence officer with a master's degree in Middle East Studies from Oxford, arrived in Baghdad 1 February 2004 as a DOD representative to work at the CPA on behalf of Deputy SECDEF Paul Wolfowitz. He immediately noted the tug-of-war between the CPA's soft approach and the heavy handed CJTF-7 policies dealing with a growing insurgency. The CPA focussed on dealing with tribal meetings and preparing to hand over ministries while the military dealt with security and detention operations.¹³⁴⁴ Their missions were not synchronized at all.

One of the first detainee engagements McArthur worked on was the tribal guarantor programme. Ambassador Bremer met frequently with tribal leaders, who consistently asked for their people to be released, promising to personally guarantee their behaviour when released. Bremer asked McArthur to lead the effort to develop the *kafeel* programme that eventually became a centrepiece of the US detention release policy not only in Iraq but Afghanistan as well.¹³⁴⁵

The military worked to identify and release those they had imprisoned through the Geneva Article 78 process,¹³⁴⁶ but it could not move fast enough. Often, the military had difficulty determining whom they even had in custody and why they had been detained. For tracking purposes at Abu Ghraib, detainees were entered into one

¹³⁴³ Jim Krane, 'Amnesty Criticizes U.S. Interrogations,' *AP*, 30 June 2003

¹³⁴⁴ McArthur Interview.

¹³⁴⁵ Ibid.

¹³⁴⁶ 'Protection of Civilian Persons in Time of War,' Article 78 of the Geneva Conventions, 12 August 1949, Geneva, Switzerland

central excel spread sheet, which was ridiculously inefficient for such a large volume of detainees. Bremer appointed McArthur the senior advisor for detainee and prisoner affairs to work with the CJTF-7 SJA Mark Warren to address the detainee crisis and coordinate civilian and military detention efforts.¹³⁴⁷

McArthur focussed on bringing the Iraqis into the process; on one occasion he met with Salem Chalabi, nephew of the controversial Iraqi dissident leader Ahmed Chalabi. Chalabi wanted to see the list of detainees scheduled for release by the coalition ahead of time and advise who should be released or not released. McArthur saw through his motive and refused to help him create political detainees. McArthur told him he could not get the list ahead of time but that he could submit a statement to the detainee review board (DRB) if he had specific concerns about detainees being considered for release.¹³⁴⁸

McArthur also pushed the CPA to release a detainee list in Arabic on their website.¹³⁴⁹ The site published two lists, one of detainees in US custody, the other, of detainees held by the Iraqis. The lists contained a first name, father's name, grandfather's name, and a tribal affiliation in order to help clarify exactly who each detainee was.¹³⁵⁰ While the lists were not always up to date, they helped inform the Iraqis on the status of their loved ones and helped alleviate the taint of the Saddam era, when detainees disappeared without a trace. The ICRC protested the CPA was encroaching on their traditional role, but the CPA continued anyway because they felt it was important for transparency.¹³⁵¹

On 22 March, at Bremer's request, McArthur submitted a detailed analysis of detention operations. First, he asserted that tactics needed to be harmonised with strategy. Too many Iraqis were detained without cause; between 65 and 80 per cent

¹³⁴⁷ McArthur Interview.

¹³⁴⁸ Ibid.

¹³⁴⁹ Ibid.

¹³⁵⁰ Master Detainee List and Iraqi Custody Service List, CPA, June 2004

¹³⁵¹ McArthur Interview.

were eventually released by the HDC phase four DRBs at Abu Ghraib but it was a haphazard process. Detaining Iraqis who should not be held fostered resentment towards the coalition and began to fuel the insurgency and affect the overall goals of the campaign. More interrogation and case review resources were required at the beginning of the detention process in order to release detainees more quickly instead of sending them to Abu Ghraib to be sorted out. Field commanders needed to understand that sending innocent detainees up the chain hurt COIN efforts, especially when no capture information was sent along with the detainee to make a case for holding them. The acceptable level of risk needed to be defined in terms of who to detain and who to release.¹³⁵²

The second major aspect of his memorandum was to improve information technology management. The system to track and record detainee information from capture to release was spread across three systems with various security classifications and was in a state of disarray. He proposed the creation of an unclassified, web-based system by a team of civilian and military experts. Last, he added a 'Recommended Language for Response to Detainee Inquiries,' to the report in order to foster the strategic communications message of how CPA rule differed from the Saddam-era.¹³⁵³

On 28 April 2004, *CBS 60 Minutes* released abuse photos from the Abu Ghraib scandal and created uproar in the US and around the globe.¹³⁵⁴ The pictures showed the US soldiers subjecting Iraqi detainees to severe humiliation.¹³⁵⁵ It added fuel to a fledgling insurgency and ended any hopes the US may have had of leaving Iraq in the near term. A few months before the scandal broke, CPA polls showed Iraqi support for the occupation at 63 per cent. A month after the photos, the number was down to

¹³⁵² Dobie McArthur, Senior Advisor for Detainee and Prisoner Issues, *Information Memo: SUBJ. - Analysis of Detention Operations to the Administrator [Paul Bremer]*, 22 March 2004, CPA – Baghdad, Iraq, pp. 1-5, appendix 1

¹³⁵³ *Ibid.*, pp. 6-7

¹³⁵⁴ Rebecca Leung, 'Abuse Of Iraqi POWs By GIs Probed: 60 Minutes II Has Exclusive Report On Alleged Mistreatment,' *CBS News*, 28 April 2004

¹³⁵⁵ Stephen Eisenman, *The Abu Ghraib Effect*, (London, UK: Reaktion Books Ltd., 2007), p. 7, 17

nine.¹³⁵⁶ Iraqi governing council members were outraged at the prisoner abuse but questioned why the international and Arab media was fixated on the scandal when they had ignored Saddam's atrocities.¹³⁵⁷

On 24 May *The New Yorker* published a detailed article on the Abu Ghraib scandal and claimed high level sources revealed the abuse at the prison was part of a secret special access program (SAP) at the Pentagon named Copper Green. This program, authorised by the Secretary of Defence for operations in Afghanistan to deal with the detention of high value detainees, was now approved for the Iraq war. The SAP, according to *The New Yorker's* sources, allowed for the systemic abuse of detainees to obtain information.¹³⁵⁸ The Pentagon quickly released a statement saying 'These assertions on activities at Abu Ghraib, and the abuse of Iraqi detainees are outlandish, conspiratorial, and filled with error and anonymous conjecture'.¹³⁵⁹

In May, US forces cornered radical *Shiite* cleric Muqtada Al-Sadar in Najaf and were poised to kill or capture him, but because of the Abu Ghraib scandal, the Iraqi leadership felt they could not afford to make him a martyr. They allowed him to leave Najaf and the arrest warrant was terminated.¹³⁶⁰

HDC Phase III: Detainee Operations Improve as Corrections Are made

After the scandal erupted, Bremer suggested sending Iraqi police observers to selected prisons and compensating some detainees found to be unjustly incarcerated. The pace of detainee review sped up from 60 days to 15 days and a cap of 30 days was placed on the length of time a detainee could be held. Bremer also suggested curtailing the ability of the MI to put a security hold on a detainee; he felt that was the largest stumbling

¹³⁵⁶ Fareed Zakaria, 'Pssst ... Nobody Loves a Torturer,' *Newsweek*, 14 November 2005

¹³⁵⁷ Bremer, pp. 350-351

¹³⁵⁸ Seymour M. Hersh, 'The Gray Zone: How a secret Pentagon program came to Abu Ghraib', *New Yorker*, 24 May 2004

¹³⁵⁹ Di Rita, Lawrence, 'Statement from the Office of the Assistant Secretary of Defense for Public Affairs', (Washington, DC: DOD, 15 May 2004)

¹³⁶⁰ Bing West, *No True Glory*, (NYC: Bantam Dell, 2005), p. 217

block when it came to detainee releases and wanted detainees screened better before being placed in prison.¹³⁶¹

In addition to the Taguba report, the DOD conducted 12 separate investigations in an attempt to identify problems as well as best practices. Ultimately, 492 recommendations were listed and implemented throughout the US global detention system.¹³⁶² Inside Iraq, the Office of the Judge Advocate General was assigned to monitor detention investigations and work with the detention TF to ensure the recommendations were implemented. The recommendations were placed in a matrix and followed up on quarterly by an O-6 (colonel) oversight council that reported to the TF general who had overall responsibility for the implementation of the recommendations.¹³⁶³

During the year following the Abu Ghraib scandal, the detention and military intelligence collection missions were in a state of uncertainty. At times, US personnel were scared to do their jobs for fear of making mistakes and getting into trouble.¹³⁶⁴ The Office of the Judge Advocate General tracked the scandal in the press and prepared press releases in response to the growing detainee abuse scandal. They also prepped senior Army leadership on breaking detainee issues and how to communicate them to the press and Congress.¹³⁶⁵ This undercurrent persisted well into 2006 as the Iraqi insurgency and civil war intensified.¹³⁶⁶

General Spider Marks, the head of the US Army intelligence training centre at Fort Huachuca, Arizona said of the scandal: ‘none of the things done to prisoners were taught at the center . . . we didn’t have interrogation issues [at Abu Ghraib]. We had the

¹³⁶¹ Bremer, p. 352

¹³⁶² Military #8, Author Interview, Ashburn, VA, 19 April 2009

¹³⁶³ Lieutenant Colonel Jane Ellen Bagwell, USA, *Interview by Operational Leadership Experiences Project Team with Combat Studies Institute*, 18 October 2005. Fort Leavenworth, Kansas. [Digital recording stored on CD-ROM at Combined Arms Research Library, Fort Leavenworth, Kansas.]

¹³⁶⁴ Military #8, Author Interview, Ashburn, VA, 19 April 2009

¹³⁶⁵ Bagwell Interview.

¹³⁶⁶ Matt Alexander, *How to Break a Terrorist*, (NYC: Free Press, 2008), p. 13

execution of interrogation [detention operations] by ill-disciplined units' issues'.¹³⁶⁷

Instructors at the MP training centre at Fort Leonard Wood, Missouri, emphasised the same thing; every US MP received a strong grounding in ethics and the proper treatment of prisoners, detainees, and refugees.¹³⁶⁸ MP school leadership stated:

Military police are responsible for the safety and security of detainees and those around them . . . and they're trained to follow specific protocols. MPs speed detainees to places of safety once captured, they ask questions to classify the detainees, and they then place them in the appropriate holding areas . . . They restrain detainees when appropriate and necessary . . . and they treat detainees according to the Geneva Conventions and in accordance with the rules of war.

Military police do not conduct interrogations, nor do they "soften up" detainees for military intelligence personnel.¹³⁶⁹

What took place at Abu Ghraib was perpetrated by rogue elements of the US military violating established doctrine. After the story broke, General Marks received letters from angry citizens asking why torture was being taught at the school. One letter was from a well-known, highly credible, retired general officer, who accused Marks of teaching torture and abuse. In response, Marks opened the centre to the media and invited them to examine instruction; he explained that time tested doctrine delineated what MPs and MI soldiers could and could not do.¹³⁷⁰ MPs were responsible for safety, handling, and movement. The MI led interrogations, but an MP was in the room or close by to handle threatening detainee behaviour. Both the MI and MP soldiers worked together to ensure a safe interrogation environment.¹³⁷¹

While Abu Ghraib became the public face of detainee abuse, most detainees were treated properly. Still, other reports of detainee abuse surfaced. In Mosul, some interrogators stripped their detainees in an attempt to shame them into talking. Others

¹³⁶⁷ Marks Interview.

¹³⁶⁸ Jim Garamone, 'MP Training Stresses Ethics, Values, Officials Say,' *AFPS*, 4 May 2004

¹³⁶⁹ *Ibid.*

¹³⁷⁰ Marks Interview.

¹³⁷¹ Garamone

blared rock music at night to cause sleep deprivation and even flicked hot cigarette butts at detainees; these interrogators were investigated.¹³⁷² One interrogator in Tel Afar committed suicide after she participated in harsh interrogations.¹³⁷³ Interrogators in the field, under pressure to obtain intelligence on the growing insurgency, sometimes sent detainees to Abu Ghraib even when they doubted the detainees' intelligence value because they wanted someone else to make the decision.¹³⁷⁴

After Abu Ghraib, the most troubling reports of abuse emanated from the SOF TF 6-26 detention facility at the Baghdad Airport known as Camp Nama. Out of reach of the ICRC, Nama was a temporary site with prison cells in several buildings.¹³⁷⁵ Personnel from the Joint Personnel Recovery Agency (JPRA), an organisation that taught US personnel how to survive enemy detention, worked onsite assisting interrogators.¹³⁷⁶

Cold water was poured on detainees to induce hypothermia, hastened by being rolled in mud and forced in front of an air conditioner. Other unapproved methods such as hooding, sleep deprivation, and stress positions were routine. The interrogation rooms were colour-coded. Red and blue rooms were for cooperative detainees. An additional soft room with rugs and leather chairs was also available. Uncooperative detainees were sent to the black room and subjected to various environmental controls such as hot and cold temperatures, strobe lights, loud music, and dogs. The JAG officers for the TF assured interrogators that 'blame would never get down to their [interrogator] level'.¹³⁷⁷

¹³⁷² Kayla Williams, *Love My Rifle More Than You*, (NYC: Norton & Company, 2005), pp. 246-249

¹³⁷³ Greg Mitchell, 'Remembering the US Soldier Who Committed Suicide After She Refused to Take Part in Torture,' *The Nation*, 13 September 2010

¹³⁷⁴ Tony Lagouranis, *Fear Up Harsh*, (London, UK: Penguin, 2008), p. 63

¹³⁷⁵ Eric Schmitt And Carolyn Marshall, 'Task Force 6-26: In Secret Unit's Black Room,' a Grim Portrait of U.S. Abuse,' *NYT*, 19 March 2006

¹³⁷⁶ Author Unknown, 'Military interrogator details new Iraq abuses,' *AP*, 25 September 2008

¹³⁷⁷ John Richardson, 'Acts of Conscience,' *Esquire*, August 2006, Volume 146, Issue 2

With intense scrutiny on detention operations in Baghdad, in the summer of 2004, the facility closed when the TF moved to Balad.¹³⁷⁸ As late as 6 September 2006, harsh techniques were reportedly employed by the TF.¹³⁷⁹ General Stanley McChrystal, the former JSOC commander whose units were at Camp Nama, stated at his ISAF confirmation hearing that he was uncomfortable with many of the techniques he inherited from his predecessor and worked to improve the interrogation process.¹³⁸⁰ Ultimately some 34 people were disciplined for detention related abuses at Camp Nama.¹³⁸¹

General Miller turned over JTF-GTMO on 24 March 2004 and prepared for his next mission in Iraq as the new deputy commander for detention operations at CJTF-7. Miller assumed command of operations¹³⁸² as HDC phase three correction operations were ramping up. Coming from GTMO where he implemented many changes to detainee operations he seemed like the perfect fit to take over detention in Iraq. One of his first tasks was to implement the Taguba report's suggestion to consolidate all aspects of prisoner operations, MI and MP, under one command.¹³⁸³ This was accomplished administratively 15 April 2004 when TF-134 was stood up.¹³⁸⁴ He became the single point of contact for all ICRC reports in theatre. Previously, some reports had not made it up the chain of command to the attention of senior leadership; this change would solve the ICRC/CJTF-7 communications problems.¹³⁸⁵

Consolidation was a recommendation he had made during his autumn 2003 assessment of the fragmented 800 MI Brigade and 205 MI operations. When he arrived

¹³⁷⁸ Schmitt

¹³⁷⁹ Walter Pincus, 'U.S. Military Personnel Were Split on Past Interrogations, Report Says,' *WP*, 12 May 2009

¹³⁸⁰ Spencer Ackerman, 'McChrystal on Detainee Abuses Under His Former Command,' *Washington Independent*, 2 June 2009

¹³⁸¹ Dexter Filkins, 'Stanley McChrystal's Long War,' *NYT*, 18 October 2009,

¹³⁸² Author Unknown, 'Hood Replaces Miller at JTF-GTMO,' *US SOUTHCOM News Release*, 24 March 2004

¹³⁸³ Taguba Report, p. 7

¹³⁸⁴ Luke Koladish and Kat Briere, 'New command marks milestone in Iraq,' *Army.mil*, 2 January 2010

¹³⁸⁵ Transcript: Senate Hearing on Iraq Prison Abuse, *WP*, 19 May 2004

in Baghdad, he reorganised the FOB at Abu Ghraib into two groups along the lines of GTMO operations. The intelligence mission was under one brigade and the detention mission was under the other. General Miller served as the overall TF commander and acted as the integrator of the two functions. As part of the reorganisation, the 16 MP Brigade, under the command of Colonel David Quantock, replaced the 800 MP Brigade and the 504 MI, under the command of Colonel Foster Payne, replaced the 205th MI.¹³⁸⁶ Quantock played a key role in fixing Abu Ghraib prison and eventually became commander of TF-134.

At Camp Bucca, no more interrogations were conducted, only hold and release operations.¹³⁸⁷ By August 2004, General Kern's investigation reported Miller had 'brought discipline, responsibility and order to the [detention] situation'.¹³⁸⁸ Colonel Larry James, an Army psychologist who worked with Miller at GTMO, came to Iraq to assist with the restructuring of detention operations. Miller told James his orders were to teach JIDC personnel at Abu Ghraib how to obtain intelligence without using abusive techniques.¹³⁸⁹ By autumn, Miller reported the new, softer, rapport building techniques were reaping better intelligence and providing better treatment for detainees.¹³⁹⁰

On 15 May, CJTF-7 was reorganised into two new commands to manage the growing war effort. The Multinational Corps-Iraq (MNC-I) was created to focus on tactical, day-to-day operations, and the Multinational Force-Iraq (MNF-I) was created to focus on strategic military operations such as dealing with the national, local, and tribal leaders and training Iraqi security forces.¹³⁹¹

In May 2004, the main detainee database at Abu Ghraib prison was scrambled by mistake when a sort function was accidentally used and all detainees' names and

¹³⁸⁶ Donna Miles, 'Army Ensuring Improvements to Detention Operations,' *AFPS*, 4 May 2004

¹³⁸⁷ [Iraq] *Detainee Operations Briefing with Major General Geoffrey Miller*, 4 May 2004, Office of the Assistant Secretary of Defense for Public Affairs, DOD, Washington, DC

¹³⁸⁸ Jim Garamone, 'Report Faults Intelligence Soldiers at Abu Ghraib,' *AFPS*, 25 August 2004

¹³⁸⁹ Larry James, *Fixing Hell*, (NYC: 2008), p. 103

¹³⁹⁰ Author Unknown, 'Kinder Questioning Reaps Tips,' *AP*, 7 September 2004

¹³⁹¹ John Banusiewicz, 'New Commands in Iraq to Replace Combined Joint Task Force,' *AFPS*, 14 May 2004

information were mixed up. Subsequently, the US was not sure which detainees' names belonged to the biographical data stored in the spread sheet. McArthur emailed General Miller to inform him of the situation, but no immediate solution was found.¹³⁹²

As part of the 1 July 2004 turnover of power to the Iraqis, Ambassador Robert Blackwell, a transition advisor to Bremer, wanted to hand over the Abu Ghraib prison.¹³⁹³ In theory, this seemed like a good idea but in reality, it was ill conceived. The US had a prison full of mostly innocent people who had no idea why they were being held. The Iraqi government would assume the detainees were guilty because the US had them in custody and they would be mired in the Iraqi prison system. Bremer, Miller, and Blackwell were all in favour of turning the prison over, but McArthur approached Dan Senior, the CPA spokesman, and told him he would use a back channel option to the President unless Senior stopped the turnover of Abu Ghraib. It worked; the prison stayed under US control.¹³⁹⁴

On 27 June 2004, the CPA created the joint detainee committee made up of 21 high-ranking officials from the Interim Iraqi Government (IIG), MNF-I, and coalition governments to synchronise detention policy.¹³⁹⁵ The following day, the CPA turned over power to the IIG and was dissolved.¹³⁹⁶

On 1 July 2004, General George Casey, the first four-star general officer to serve in Iraq, was installed as the MNF-I commanding officer. He took over from General Sanchez who had been at the heart of the Abu Ghraib scandal as the commander of CJTF-7.¹³⁹⁷ Sanchez removed himself as the head of the abuse

¹³⁹² McArthur Interview.

¹³⁹³ Ibid.

¹³⁹⁴ Ibid.

¹³⁹⁵ 'Joint Detainee Committee,' *Coalition Provisional Authority Order Number 99*, 27 June 2004

¹³⁹⁶ John Banusiewicz, 'Occupation Ends; Iraqis Take Charge of Country's Fate,' *AFPS*, 28 June 2004

¹³⁹⁷ Eric Schmitt, 'The Reach of War: Man in the News -- George William Casey Jr.; A Low-Key Commander With 4 Stars to Tame the Iraqi Furies,' *NYT*, 4 July 2004

investigation and was then questioned by investigators regarding his knowledge of what happened at Abu Ghraib. He claimed no foreknowledge of any abuse.¹³⁹⁸

Casey was not the first choice to command US forces in Iraq but after the Abu Ghraib scandal he was selected for his quiet demeanour, strong intellect, and solid knowledge of combined and joint operations in an international setting. Ironically, Casey was born in occupied post WWII Japan where his father served as an officer in the Army of Occupation. He was now the head of an occupying military force as the senior military advisor to the US Ambassador. His mandate was to help rebuild the Iraqi security forces and ensure detention operations ran smoothly as in phase five of the HDC.¹³⁹⁹

During this phase, General Miller continued to consolidate detention operations under the newly created TF-134, and he also worked to implement recommended reforms from the many investigations that took place during his tenure as the TF-134 commander. His goal was to create an environment focused on gaining the maximum amount of intelligence while detaining prisoners in a humane manner according to the Third and Fourth Geneva Conventions. At one of his first press conferences, he was asked about his assessment of detention operations in Iraq beginning autumn 2003. Of that visit he said:¹⁴⁰⁰

I am absolutely confident that every recommendation we made was not only appropriate, but would have made this [US Iraq detention] operation both more effective and more efficient. We're a standards-based organization, and that's what we talked about. And we're a leadership organization, and we continue to focus on what allows both the detention and interrogation missions to work most effectively is the active involvement of leaders of every grade in how that you go about doing this.¹⁴⁰¹

¹³⁹⁸ Josh White, 'Gen. Casey Named to Head Forces in Iraq,' *WP*, 16 June 2004

¹³⁹⁹ Schmitt

¹⁴⁰⁰ *[Iraq] Detainee Operations Briefing with Major General Geoffrey Miller*, 4 May 2004, Office of the Assistant Secretary of Defense for Public Affairs, DOD, Washington, DC

¹⁴⁰¹ *Ibid.*

General Karpinski had blamed his assessment team for trying to ‘GTMOize’ her detention operations by having MPs take an active role in the MI collection mission.¹⁴⁰²

Miller’s suggestion was purely doctrinal based on the reality that MPs were passive intelligence collectors who observed detainees throughout the detention process; Miller never insinuated they should be involved in the actual MI interrogation.¹⁴⁰³

Under General Miller, tight controls and procedures were implemented for all interrogations; he understood that detention and interrogation required oversight. Interrogators only used approved interrogation TTPs and submitted detailed plans to their supervisors for approval. Sleep deprivation could be used if authorised by a general officer. Stripping detainees naked was unauthorised. Hooding detainees had been used as a force protection method when moving detainees around in theatre, but after Abu Ghraib it was discontinued. Beginning in early April, MPs used blindfolds or blacked out goggles instead. Interrogators who used unapproved techniques were dealt with swiftly.¹⁴⁰⁴

During this phase several more detention investigations were completed and the results reviewed by Miller’s TF-134 for opportunities to improve. On 21 July 2004, the Army IG investigation concluded a five-month study into Army detention and interrogation operations in Iraq and Afghanistan. Investigators interviewed 650 military personnel at 16 overseas facilities as well as US-based MP and MI schools. They concluded that US personnel overwhelmingly understood that detainees were to be treated humanely. The report emphasised that a few bad soldiers with poor supervision caused the problems, rather than training, policies, or a systemic failure.¹⁴⁰⁵ The investigation recommended full reviews in the areas of physical safety, infrastructure

¹⁴⁰² Ibid.

¹⁴⁰³ Transcript: Senate Hearing on Iraq Prison Abuse, *WP*, 19 May 2004

¹⁴⁰⁴ [Iraq] Detainee Operations Briefing with Major General Geoffrey Miller, 4 May 2004

¹⁴⁰⁵ Gerry Gilmore, ‘Bad Troops, Poor Leaders Responsible for Detainee Abuses,’ *AFPS*, 22 July 2004

improvement, field sanitation, and better medical team training for detention operations.¹⁴⁰⁶

On 24 August 2004, the Schlesinger report concluded there was institutional and personal responsibility at high levels that allowed conditions to lead to abuse, but there was no pre-orchestrated programme to abuse detainees. The report indicated the US had detained more than 50,000 individuals globally, and had 300 cases under investigation. Of the 300, more than half were for infractions at the point of capture, the most dangerous part of the detention process. The report suggested one cause was the low MP to detainee ratio, which was one guard to 75 detainees. It also cautioned, as had General Karpinski in her 1 April rebuttal, that many MPs were not really trained for the mission they were doing and they were poorly equipped.¹⁴⁰⁷

Schlesinger and his team found that the sadistic behaviour of the guards at Abu Ghraib was not duplicated anywhere else. He praised US forces for being well behaved, patient, and kind, and noted that US troops had performed detention operations better than in WWII, Korea, or Vietnam.¹⁴⁰⁸ The report suggested adding additional JAG resources to expedite the detainee review process and create joint doctrine that clearly defined the relationship between MI and MPs in detention operations. It also described the importance of interrogators, linguists, and other HUMINT specialists, and suggested the creation of a clearly defined career management processes to allow for the growth of these much needed skill sets. It acquiesced that contract linguists and interrogators had to be employed due to the lack of these skills in the DOD, but cautioned that vigorous oversight was required. One of the most important suggestions was the establishment of a joint service integrated process team to develop new joint operational standards for detention operations in

¹⁴⁰⁶ General Paul Mikolashek, Army Inspector General, *Department of the Army Inspector General - Detainee Operation Inspection*, (Washington, DC: DOD, 21 July 2004), p. 91

¹⁴⁰⁷ Jim Garamone, 'Panel Cites Direct, Indirect Responsibility for Abu Ghraib,' *AFPS*, 24 August 2004

¹⁴⁰⁸ Garamone, 'Detainee Panel Tells Senate Not to Overlook Forest,' *AFPS*, 9 September 2004

COIN for the GWOT that would clearly delineate what was allowed and what was not.¹⁴⁰⁹

On 25 August 2004, the Fay-Kern investigation into the 205th MI Battalion at Abu Ghraib was released. Investigators examined the period from 25 July 2003 to 6 February 2004 and found 23 MI soldiers, ten MPs, and four MI contractors directly participated in 44 incidents of abuse of prisoners. Six MI soldiers, two MI contractors and one MP knew of the abuses and did not report them, and two medics saw signs of the abuses and did not report them.¹⁴¹⁰ The report faulted the leadership of the 205th MI and 800th MP at Abu Ghraib for not carrying out their assigned missions properly. The report stated DOD and Army doctrine was not at fault, but, rather, had it been followed the abuses would not have occurred. The report suggested updating the concept of the JIDC, increasing more HUMINT posts, clarifying the roles of the MPs and MI, and teaching how to work with non-DOD organisations in detention operations.¹⁴¹¹

On 8 November 2004, Army General Richard Formica completed an investigation into the detention operations of the Combined Joint Special Operations Task Force Arabian Peninsula inside Iraq from the period of 15 May 2004 to 8 November 2004. Formica's team interviewed soldiers, commanders, and medical personnel in Iraq and screened medical records and interrogation reports. They found no evidence of the detainee abuse that had been reported by three detainees, but made several recommendations to improve operations.¹⁴¹²

The report did not suggest disciplinary action, but called for correct detention and interrogation policies to be promulgated throughout the TF according to the latest guidance. In addition, TF personnel needed to understand the difference between

¹⁴⁰⁹ Schlesinger, pp. 92-95

¹⁴¹⁰ Jim Garamone, 'Report Faults Intelligence Soldiers at Abu Ghraib,' *AFPS*, 25 August 2004

¹⁴¹¹ General George Fay and General Paul Kern Report, AR 15-6, *Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade*, (Washington, DC: DOD, 25 August 2004), pp. 3-5

¹⁴¹² Sara Wood, 'Detainee Abuse Investigation Report Released,' *AFPS*, 17 June 2006

tactical interrogations and tactical questioning, make sure detainees had adequate bedding, food, and medical care, and were sent to a long term holding facility within 24 to 48 hours. In addition, a complete file with a record of all that had happened to the detainee since the point of capture needed to travel with the detainee.¹⁴¹³

Since many of the units involved in MI and MP activities in Iraq were involved in the Abu Ghraib detention abuse were reservists, the head of the Army Reserve, Lieutenant General James Helmly, ordered an investigation into the training of Army Reserve units in March 2004.¹⁴¹⁴ In December, the investigation, which focused on MP and MI units, reported on the frequency, adequacy, quality, and standards for training in law of land warfare, detainee treatment requirements, ethics, and leadership. Based on the review, the investigation found a weakness in the training tying the MI and MP missions together. Law of land warfare was taught in training, but courses needed developing. The suggestions were to nurture and preserve a strong ethical and mission-oriented force, to provide clear training guidance, and offer effective training. Leaders were encouraged to continually strive to improve unit and soldier readiness by identifying training shortcomings and implementing procedures to provide challenging, mission-relevant training.¹⁴¹⁵

By September 2004, the military had a good understanding of what needed to be corrected in detention operations. General Ryder, the PMG for the Army, published an action plan for detainee and interrogation operations based on the lessons learned and the legal and moral requirements to allow the combat leaders to achieve their desired end states. The plan clarified rules for the handling of prisoners, the use of dogs, the MI and MP relationship, and how to deal with agents from OGA. It also redesigned unit

¹⁴¹³ General Richard Formica, Article 15-6 *Investigation of CJSOTF-AP and 5th SF Group Detention Operations*, (Washington DC: DOD, 8 November 2004), pp. 11-12

¹⁴¹⁴ Jim Garamone, 'Prison Investigations Moved Swiftly, Officials Say,' *AFPS*, 3 May 2004

¹⁴¹⁵ General James Helmly, USAR, *Special Assessment of Training for Army Reserve Units on the Law of Land Warfare, Detainee Treatment Requirements, Ethics and Leadership*, (Fort McPherson, GA: OIG-USARC, May to December 2004)

structures to more efficiently handle internment and resettlement operations and mandated there would be no ‘ghost detainees’ without assigned ISNs. It required OGA personnel to follow DOD detention policies in DOD facilities.¹⁴¹⁶

The Army MP School added 55 hours of education for soldiers handling detainees and sent mobile training teams to various locations to ensure soldiers were properly trained. The Army Training and Doctrine Command readied five core areas of training for all soldiers in ethics, leadership, law of land warfare, the Geneva Conventions, and values. Additional training was also added to show soldiers how to report any illegal orders or requests. Lastly, a new Army interrogation manual *FM 2-22.3*, with strict limits delineating all the new changes was put into production.¹⁴¹⁷

One of the major recommendations in several of the reports as well as from the CPA supported HDC phase four operations to release detainees that were erroneously picked up including low level detainees who were not deemed to be a security risk. The previous MNF-I DRB consisted of only three US officers. The new boards consisted of nine members: six representatives from the interim Iraqi government and three senior officers from MNF-I. Beginning 21 August 2004, the first combined review and release boards (CRRB) were held three days per week. The final release authority rested with General Miller, but he made decisions after consulting with the Iraqi Justice Minister and generally accepted the board’s suggestions unless new information came to light that merited sending the file back to the board. Non-security detainees who committed crimes were not seen by the board, but sent to the Central Criminal Court of Iraq.¹⁴¹⁸

While General Miller had made significant improvements to detention operations in Iraq, the scrutiny placed on him by the judicial-Geneva Conventions camp supporters due to his August 2003 recommendations to have the MI and MPs work

¹⁴¹⁶ Kathleen Rhem, ‘Army Improving Procedures for Handling Detainees’ *AFPS*, 24 February 2005

¹⁴¹⁷ *Ibid.*

¹⁴¹⁸ Author Unknown, ‘Iraq Detainee Board Reviews 300 Cases During First Week,’ *AFPS*, 29 August 2004

more closely together at Abu Ghraib continued to haunt him; some even blamed him for the abuses at Abu Ghraib. The publicity proved to be too much for DOD leadership and he was removed as the TF-134 commander after only eight months and relegated to a Pentagon staff job as the Army's assistant chief of staff for installation management.¹⁴¹⁹ With his reputation tarnished and his chances for promotion slim, he was allowed to retire 31 July 2006 after promising to voluntarily submit to congressional questioning if requested.¹⁴²⁰

General William Brandenburg became the first general officer to be put in charge of detention operations in Iraq without any previous experience in that area on 29 November 2004.¹⁴²¹ By this time, many of the early challenges within the detention system had been worked through and TF-134 was in need of a leader without any detention baggage to manage the growing prisoner population. Plus, he had MI and MP experts on staff to help him deal with the TF's challenges.

Brandenburg's baptism by fire came 31 January 2005, when prisoner riots broke out at the largest US internment facility, Camp Bucca. Guards shot and killed four detainees as they fought to bring the facility under control.¹⁴²² Brandenburg realised conditions at Bucca had become unmanageable and change was needed. He said the US had to better understand who they had in custody and take back the facility from the extremist detainees, both *Sunni* and *Shiite*, who ruled the inside of the camps and meted out their own version of *Sharia*-based justice against detainees who did not obey them.¹⁴²³

During General Brandenburg's tenure, two more major investigation results were released. On 7 March 2005, Admiral Albert Church completed a nine month

¹⁴¹⁹ Author Unknown, 'General Who Ran Prisons Assigned To Pentagon,' *Orlando Sentinel*, 25 November 2004

¹⁴²⁰ Josh White, 'General Who Ran Guantanamo Bay Retires,' *WP*, 1 August 2006

¹⁴²¹ General William Brandenburg, Official Army Biography, Current as of 15 December 2008

¹⁴²² Author Unknown, 'Riot at Camp Bucca Leaves Four Detainees Dead, Six Injured,' *AFPS*, 31 January 2005

¹⁴²³ Jeffrey Azarva, 'Is U.S. Detention Policy in Iraq Working?' *MEQ*, Winter 2009

investigation into US detention and interrogation operations for all US facilities globally; his team interviewed more than 800 personnel who were, or had been, involved in detention operations in Iraq, Afghanistan, and GTMO. The Church investigation validated findings from previous investigations and made many of the same recommendations. The report underlined the fact that there was no national policy to treat detainees improperly, but that all the policy and training supported proper treatment consistent with the Geneva Conventions. Nevertheless, failure to provide specific guidelines for changes to detention operations in Afghanistan and Iraq caused confusion when changes, meant only for GTMO, were passed around to the other theatres.

Church also discovered that not a single lesson learned from recent conflicts including the Balkans, the Gulf War, and Vietnam had been adopted in detainee operations guidance,¹⁴²⁴ in essence, proving the reality of the eighth phase of the HDC. He affirmed ICRC had sent detailed warnings to US commanders about detainee abuse, and had their warnings been heeded some of the abuse may have been avoided. His final report helped push the finalisation of tightened interrogation rules that would be updated as doctrine for interrogators and incorporated into *FM 2-22.3*.¹⁴²⁵ Had leaders examined the historical record, they could have avoided tragic, strategic, operational, and tactical missteps.

On 24 May 2005, Army Surgeon General Kevin Kiley completed the last major DOD detention operations report by auditing detainee medical operations in Afghanistan, GTMO, and Iraq. With the hindsight of previous investigations, Kiley's team interviewed 1,182 personnel over a five-month period regarding medical treatment of detainees in US custody. The overall conclusion was that detainee medical personnel, despite some initial challenges, provided a high level of care across the

¹⁴²⁴ Church Report, p. 9

¹⁴²⁵ Eric Schmitt, 'New Interrogation Rules Set For Detainees In Iraq,' *NYT*, 10 March 2005

various theatres to all detainees. The team found areas for improvement such as training medical personnel to better understand detention and interrogation operations and to provide exercise support.¹⁴²⁶

One issue that caused concern at GTMO was the use of the Behavioural Science Consultation Teams (BSCTs). No BSCT had ever provided support in Afghanistan, although one was headed there at the time of the investigation. BSCTs had provided support in Iraq and Cuba. The main recommendation from the assessment team was to establish clear SOPs for the BSCT members, many of whom felt conflicted in their role supporting interrogation operations and being medical professionals. Kiley's team recommended the use of only senior, experienced psychologists, and not physician-psychiatrists.¹⁴²⁷ General Kiley agreed with the findings and recommendations except for the prohibition of physician-psychiatrists and asked that it be further reviewed. He also directed the staff medical JAG office to look into five incidents of potential misconduct.¹⁴²⁸

During the remainder of General Brandenburg's tenure he continued to implement changes to improve detainee care. In the area of medical treatment, detainees received excellent services at Abu Ghraib.¹⁴²⁹ Other challenges persisted, such as continued insurgent attacks on coalition detention facilities. On 2 April 2005, an attack involving car bombs and mortars on Abu Ghraib wounded 44 US soldiers and 13 detainees.¹⁴³⁰ Several civilians were killed a few days later in another attack.¹⁴³¹ Detainees who attempted escape were often successful.¹⁴³² At the brigade and division levels, review boards released more than 7,000 detainees in the first six months of 2005

¹⁴²⁶ General Kevin Kiley, *Final Report-Assessment Of Detainee Medical Operations for OEF, GTMO, and OIF*, (Falls Church, VA: 24 May 2005), p. 1-2

¹⁴²⁷ *Ibid.*, pp. 18-2, 18-12 to 18-16

¹⁴²⁸ *Ibid.*, Kiley memo attached to final report

¹⁴²⁹ Donna Miles, 'Medics at Abu Ghraib Helping to Win Iraqis' Hearts, Minds,' *AFPS*, 17 March 2005

¹⁴³⁰ Author Unknown, 'Insurgents Launch Attacks on Abu Ghraib,' *AFPS*, 2 April 2005

¹⁴³¹ Kathleen Rhem, 'Abu Ghraib Attacks Show Terrorists Still Deadly, Bush Says,' *AFPS*, 5 April 2005

¹⁴³² Author Unknown, 'Three Detainees Escape From Abu Ghraib,' *AFPS*, 26 May 2005

before ever making it to Abu Ghraib.¹⁴³³ Thousands more were released by the end of the year.¹⁴³⁴

Despite these challenges, detention operations provided valuable intelligence to the coalition forces. In July 2005, a courier from Al-Qaeda leader Ayman Al-Zawahiri, was intercepted with a letter intended for the Al-Qaeda in Iraq leader Abu Musab Al-Zarqawi. The letter instructed him to focus on the Iraqi populace as a strategic COG. He said: ‘I say to you that we are in a battle, and that more than half of this battle is taking place in the battlefield of the media. And that we are in a media battle in a race for the hearts and minds of our Umma [Muslims in the Islamic world]’.¹⁴³⁵ This key intelligence capture illuminated Al-Qaeda’s strategy and revealed tension between their leadership and their tactical commanders.

In December 2005, US forces continued to make HDC phase three improvements and 159,000 soldiers were now stationed in Iraq;¹⁴³⁶ this far outstripped the 2002 plan, which pre-supposed only 5,000 US troops left to assist with stability and withdrawal operations.¹⁴³⁷ On 1 December, General John Gardner replaced General Brandenburg as TF-134 commander in charge of 3,700 US military personnel guarding more than 14,000 prisoners in four major prisons operating at 119 per cent capacity and growing. Gardner oversaw detention operations during a large-scale uptick in fighting as *Sunni* versus *Shiite* violence began to escalate and detainees became more violent. During this period the US was unable to turn over a majority of the prisoners to the Iraqis whose prisons and courts did not yet meet international standards; for the short

¹⁴³³ Author Unknown, ‘Almost 900 Detainees in Iraq Set Free in July, Officials Say,’ *AFPS*, 1 August 2005

¹⁴³⁴ Author Unknown, ‘IEDs Kill Three Soldiers; 1,000 Prisoners to be Released From Abu Ghraib,’ *AFPS*, 26 September 2005

¹⁴³⁵ Ayman Al-Zawahiri, Letter to Abu Musab Al-Zarqawi dated 9 July 2005, captured by US military, released to the public by the ODNI, 11 October 2005

¹⁴³⁶ Thomas Ricks, *Fiasco*, (NYC: Penguin Press, 2006), p. 322

¹⁴³⁷ TOP SECRET POLO STEP [FOIA], Phase IV Notional Ground Force Composition, CENTCOM White House Briefing, Fall 2002

term, the US was stuck with them.¹⁴³⁸ Overall, US policy still treated detention as strategically irrelevant.¹⁴³⁹

Another HDC phase three correction was to find more space to house detainees. With the Abu Ghraib, Camp Bucca, and Camp Cropper prison camps overflowing, the US opened a new maximum-security prison in an old fort built in 1977 by the Russians in Northern Iraqi Kurdistan 25 kilometres north of Suleimaniya.¹⁴⁴⁰ The fort had been the base of operations for Saddam's military during the bloody *Anfal* campaign against the Kurds in the 1980s. Several HVDs were sent to the new prison including Ali Hassan Al-Majid, also known as 'Chemical Ali'.¹⁴⁴¹

Preparations to move to the facility began in October 2005 when Fort Suse underwent eight weeks of renovations to become a top-tier facility;¹⁴⁴² the US spent US\$45 million to upgrade the existing infrastructure. During the renovation process, local Kurdish contractors did the work and one worker stole the plans for the base and tried to sell them to the Iranians. He was caught by the Kurds and allegedly executed.¹⁴⁴³

The Army, short on MPs, requested manpower from the Navy to run the facility. The Navy established the 500-sailor Navy Provisional Detainee Battalion One (NPDB-1) as the guard force and worked with the 43rd MP Company responsible for detainee operations. The Navy guard force was also known as TF 2-6 in honor of the last Navy detainee battalion stood up in 1919 during WWI that ran a pier side prison ship called the X-Two-Six. The plan for the 2,100-bed Fort Suse facility was to establish operations, train the Kurds to run it, and then turn it over to them.¹⁴⁴⁴ The USAF set up

¹⁴³⁸ Schmitt and Shanker

¹⁴³⁹ Azarva

¹⁴⁴⁰ Author Unknown, 'Fort with long history now successful Iraqi prison,' *MNF-I*, 3 January 2007

¹⁴⁴¹ Military #17, Author Interview, Virginia Beach, VA, 24 and 26 August 2009

¹⁴⁴² Elaine Eliah, 'Team Quickly Turns Old Fort Into Detention Facility,' *AFPS*, 21 October 2005

¹⁴⁴³ Military #17 Interview.

¹⁴⁴⁴ Ibid.

a similar detainee squadron in late 2004 and was sent to provide MP assistance at Camp Bucca.¹⁴⁴⁵

The battalion received 90 days of Army detention training at Fort Jackson, South Carolina and Fort Hood, Texas, and was certified in detainee operations according to Army TIF doctrine. On 14 February, they deployed to Fort Suse. The prison, commanded by a Navy O-6 captain with an Army lieutenant colonel deputy, sat on a 6,000-foot hill against the mountains with a six-mile secure vantage point all around. To avoid car bombs, no non-US vehicles were allowed up the hill. There were several layers of outside security with a Quick Reaction Force (QRF) on constant standby. Titan Corporation contracted 300 local linguists to support prison operations, which included state of the art medical equipment and several doctors dedicated to detainee care.¹⁴⁴⁶

Inside the prison, MPs were constantly counting detainees; there were 70 per room. They were mostly high threat level detainees awaiting trials, spending life in prison, or sentenced to be hanged by the Iraqis. Because they had nothing to lose, detainees scuffled regularly with the guards, especially the female guards whom they were especially violent towards; they continually attempted to take hostages, so guards were constantly on edge. A 10 to 12 person emergency reaction force (ERF) was established to counter the violence. Because the facility was a maximum-security prison, prisoners were escorted everywhere, unlike traditional TIFs where detainees had some freedom of movement. Only one prisoner escaped Fort Suse, an Iranian who slipped over the border. Arab detainees did not attempt escape because they were in Kurdish territory and knew they would be treated harshly by the locals if caught.¹⁴⁴⁷

In search of retribution against those who participated in the killing of Kurds under Saddam's regime, the *Peshmerga* intelligence incessantly attempted to obtain full

¹⁴⁴⁵ Joseph Romano, 'Air Force breaks new ground at Camp Bucca, Iraq,' *MP*, October 2005

¹⁴⁴⁶ Military #17 Interview.

¹⁴⁴⁷ Ibid.

prisoner lists. US forces trained about 1,200 Kurdish correctional police, *Peshmerga* dropouts, to take over the facility, but the Kurds made it clear they planned to kill the detainees once they were in charge. Some detainees released from Fort Suse spread rumours of torture at the facility, and because it was so remote it began to have a bad reputation despite the efforts of four ICRC representatives stationed there permanently. A decision was made to shut it down rather than turn it over to the Kurds.¹⁴⁴⁸

In October 2006, the last detainees were sent to Camps Bucca and Cropper¹⁴⁴⁹ and the empty facility was turned over to the Kurds in November. As the last US personnel helicoptered out, they watched the Kurdish *Peshmerga* engage in a fire fight with the Kurdish correctional police they had just trained, contending over the items that had been left behind.¹⁴⁵⁰ The Iraqis eventually turned Fort Suse into a federal prison.¹⁴⁵¹

The spark that launched Iraq into major *Sunni-Shiite* ethnic conflict was lit 22 February 2006 by Al-Qaeda's bombing of the *Al-Askari* Mosque in Samarra.¹⁴⁵² The US strategy of fighting a kill-capture kinetic heavy war had led to the death and detention of tens of thousands of Iraqis, but the Iraqi government had not provided sufficient security to allow ground forces to withdraw. While effective in capturing former *Ba'ath* party leaders, US strategy also created many 'accidental guerrillas'¹⁴⁵³ or Iraqis who resisted the occupation. The bombing of one of the holiest shrines in *Shiite* Islam was the tipping point towards a sectarian war between Iraqi Sunnis and Shias. As clashes intensified, hundreds of Iraqi civilians were killed in religious and ethnic fighting. The US looked to the fledgling Iraqi government for a top down solution but they could not provide it. It took US leadership in Iraq months to understand what was

¹⁴⁴⁸ Ibid.

¹⁴⁴⁹ Joel Roberts, 'Abu Ghraib Prison Totally Empty,' *AP*, 28 August 2006

¹⁴⁵⁰ Military #17 Interview.

¹⁴⁵¹ Author Unknown, 'Fort with long history now successful Iraqi prison,' *MNF-I*, 3 January 2007

¹⁴⁵² Ellen Knickmeyer and K.I. Ibrahim, 'Bombing Shatters Mosque In Iraq', *WP*, 23 February 2006

¹⁴⁵³ David Kilcullen, *The Accidental Guerrilla*, (Oxford, UK: Oxford University Press, 2009), pp. 119-

going on and develop a new plan. On 7 June, US SOF hunted and killed Zarqawi, a main instigator of violence, after extensive intelligence work based on the interrogation of many detainees.¹⁴⁵⁴ In addition to foreign Arab and Iraqi fighters some of the detainees interrogated during this time period were US citizens such as Joe Andrew who was initially told he was held as an enemy combatant¹⁴⁵⁵ along with US citizens Donald Vance and Nathan Ertel.¹⁴⁵⁶ All were eventually released and no charges were filed against them for supporting terrorism despite having earlier been accused of supporting the insurgency.

After Zarqawi was killed, General Casey and Iraqi Prime Minister Maliki altered the plan to invade the *Sunni* extremist city of Ramadi, just as Fallujah had been seized street by street, in favour of an attempt to work with the tribes. Police recruitment among the tribes in June 2006 yielded a paltry five recruits. Most Iraqis were still too scared to work with the US and distrusted the Maliki government. But in June and July, the bodies of dead Al-Qaeda operatives began appearing on the streets of Ramadi. The US did not know who was responsible. *Sunnis*, tired of the intimidation campaign, were killing Al-Qaeda members themselves. Once the foreign Al-Qaeda fighters made it clear they wanted to marry into the local Iraqi tribes to develop a *Salafi* state, the Iraqi *Sunni* alliance with the foreign Al-Qaeda fighters was over.¹⁴⁵⁷

The key to the turnaround was Sheikh Abdul-Sittar who said Al-Qaeda was an enemy he shared with the US. He suggested police stations be built in the areas the police were recruited from to protect their families and held recruiting drives in his home. The new population centric counterinsurgency strategy worked; the first 60 police were recruited from Ramadi on 9 September 2006 and the ‘Awakening’ or *Sahwat Al-Anbar* was born. By December, there were 6,000 police in Ramadi linked to

¹⁴⁵⁴ Alexander, pp. 277-279

¹⁴⁵⁵ Joe Trimpert, Author Interview, Kabul, Afghanistan, 22 March 2013

¹⁴⁵⁶ Donald Vance, *Plaintiff Complaint against Donald Rumsfel by Loevy & Loevy*, In the United States District Court Northern District Of Illinois, Eastern Division, 2006

¹⁴⁵⁷ Sterling Jensen, Author Interview, Ashburn, VA, 28 March 2009

the Sunni tribes who wanted Al-Qaeda out of Iraq. As security increased, Abdul-Sittar told the tribes to keep working with the US since this is what would help the US to withdraw their troops from Iraq.¹⁴⁵⁸

On 15 August 2006, in preparation for the turnover of Abu Ghraib, 3,000 prisoners were transferred to a new US\$60 million detention facility at Camp Cropper near the Baghdad airport.¹⁴⁵⁹

A TF from the 66 MI Group in Germany replaced the 524th MI at Abu Ghraib in January 2006. Their pre-deployment training ill-prepared them to take over the JIDC mission. But under the direction of TF-134, they adapted to the daily operational battle rhythm.¹⁴⁶⁰

Three years after the abuses, the interrogation booths were located in containers equipped with monitoring equipment that continually broke down. The 66 began fixing the media and document exploitation capability. They coordinated with the SOF and OGA elements, which also worked with detainees. In coordination with TF-134 and the civilian contractor KBR, the 66 MI moved JIDC operations to the new detention facility at Camp Cropper. The superior facilities at Cropper allowed for better morale among interrogators and improved detention and intelligence operations.¹⁴⁶¹

On 1 September, TF-134 relinquished control of the vacant prison to the 1st Iraqi Army, who secured it for the Ministry of Justice. US Marines remained at Abu Ghraib to assist the Iraqis with training during the transition.¹⁴⁶² It later reopened as the

¹⁴⁵⁸ Ibid.

¹⁴⁵⁹ Joel Roberts, 'Abu Ghraib Prison Totally Empty,' *AP*, 28 August 2006

¹⁴⁶⁰ Major Joe O'Neil, USA, *Interview by Operational Leadership Experiences Project Team with Combat Studies Institute*, 29 May 2008. Fort Leavenworth, Kansas. [Digital recording stored on CD-ROM at Combined Arms Research Library, Fort Leavenworth, Kansas.]

¹⁴⁶¹ Ibid.

¹⁴⁶² Author Unknown, 'Iraqi Army Takes Over Responsibility for Abu Ghraib Prison,' *AFPS*, 3 September 2006

Baghdad Central Prison under the control of the Iraqi Ministry of Justice¹⁴⁶³ who struggled to provide proper living conditions for the detainees.¹⁴⁶⁴

Between March 2003 and December 2006, 58,000 Iraqis had been in US custody; only 15,000 were in custody by the end of 2006. After the first year of the war, the Odierno policy of rounding up every military aged Iraqi male in cordon and sweep searches was replaced with a more methodical process after HDC phase three corrections were implemented via the results of the major investigations. Arrest forms, sworn affidavits, digital photographs, and evidence were all collected into an arrest package and reviewed at the battalion and brigade level before a detainee was sent to a TIF.¹⁴⁶⁵ Most detainees were released before they made it to a TF-134 TIF.¹⁴⁶⁶

In his 2004 CPA memorandum, McArthur envisioned providing resources to point of capture units to enable the release of detainees who did not belong in custody. One in five of all detainees did end up at a TIF; they spent an average of 300 days in prison, and it became crucial to release as many as possible. However, this enthusiasm to release prisoners quickly created a new problem called ‘catch and release’. Iraqi police officers and US soldiers complained the insurgents they rounded up were released too hastily, only to be caught again. This was demoralising for coalition soldiers and their Iraqi partners as they struggled to quell the violence.¹⁴⁶⁷ Other Iraqi detainees were lost in the bureaucracy of the prison system and held three to four years before being released.¹⁴⁶⁸

In Ramadi, Sheik Abdul-Sittar ran a prison in his own house. He complained that if he turned a suspect over to US custody, they were sent to Camp Bucca, released

¹⁴⁶³ Arwa Damon, ‘Abu Ghraib now a humane prison, Iraq officials say,’ *CNN*, 22 February 2009

¹⁴⁶⁴ Ned Parker and Saif Hameed, ‘16 prisoners escape in northern Iraq,’ *LA Times*, 25 September 2009

¹⁴⁶⁵ Bing West, *The Strongest Tribe*, (NYC: Random House, 2008), pp. 180-181

¹⁴⁶⁶ Douglas Stone, Author Interview, Arlington, VA, 10 March 09

¹⁴⁶⁷ West, pp. 180-181

¹⁴⁶⁸ Amanda Schneider, ‘Iraq: Looking back,’ *Omaha World Herald*, 5 September 2010

in a few weeks, and would return to kill them. He conducted his own interrogations before turning over his prisoners to the US.¹⁴⁶⁹

Detention operations based in the Mosul area supported both kill-capture teams and conventional units. Iraqi interrogators produced useable intelligence from detainees, but once in US custody, many detainees refused to talk and several denied all the information they had provided previously. US SOF teams captured training documents instructing Al-Qaeda on counterinterrogation techniques based on US interrogation rules. The instructions guaranteed if a detainee said nothing, a review board would release him in three to nine months. To US war fighters on the ground, this was distressing; violent prisoners knew they could wait out several months in prison, resist interrogation, and then re-join the fight.¹⁴⁷⁰ While this was often the case, as capturing units improved documentation and arrest packets became more robust, there was evidence to keep them in custody longer.¹⁴⁷¹ Catch and release was not finally corrected until General Stone took over detention operations in May 2007.¹⁴⁷²

On 10 January 2007, President Bush announced a surge of US troops would be sent to Iraq to stop the violence. The next day the first troops arrived¹⁴⁷³ and by June, all additional troops were in place¹⁴⁷⁴ to implement the new COIN strategy of clear, hold, build, and secure. Bush appointed General David Petraeus to be the MNF-I commander; his first act was to assemble a joint strategic assessment team to study and create a combined civil-military security plan comprised of 24 experts led by Colonel H. R. McMaster and David Pearce from the State Department.¹⁴⁷⁵

Ambassador Ryan Crocker and General Petraeus planned the combined operation and urged the Iraqi government to protect its citizens regardless of religious

¹⁴⁶⁹ Sterling Jensen, Author Interview, Ashburn, VA, 28 March 2009

¹⁴⁷⁰ Elaine Grossman, 'U.S. Officers In Iraq: Insurgents Are Repeatedly Captured And Released,' *Inside Defense*, 7 December 2006

¹⁴⁷¹ Military #6, Author Interview, Draper, UT, 22 July 2009

¹⁴⁷² Stone Interview.

¹⁴⁷³ Jim Garamone, 'Gates Says No D-Day for Troop Surge Into Iraq,' *AFPS*, 11 January 2007

¹⁴⁷⁴ Garamone, 'Admiral Describes Way Forward for Baghdad Troop Surge,' *AFPS*, 8 June 2007

¹⁴⁷⁵ Kilcullen, pp. 133

or ethnic background. Both realised political stability was the endgame once security was established. A key COG was the creation of joint security stations where Iraqi security personnel and US soldiers worked together in Baghdad and other cities.¹⁴⁷⁶

As the surge moved forward, more detainees moved through US detention. The system was extremely stressed by the new detainees produced by intensified operations. Ultimately, General Gardner decided to ban the media from the detention camps until further notice. By the end of his tour in March 2007, detainees controlled the inside of the prisons and he interfaced with detainee representatives to resolve problems.¹⁴⁷⁷ The scenario was reminiscent of the US detention disaster on Koji-do Island during the Korean War where the prisoners controlled the inside of the camps.¹⁴⁷⁸

The blueprint for the new Iraq strategy was detailed in General Petraeus' 2006 revised COIN manual, *Counterinsurgency: FM 3-24*, but besides reaffirming that detainees must be treated according to the Geneva Conventions and interrogations were governed by the Army interrogation manual, few specifics were addressed in the three pages dedicated to detention.¹⁴⁷⁹ For the surge to work, interrogators needed a new approach to detainee operations.

With surge operations moving forward, detention in disarray, and General Gardner's tour almost over, the selection of the next TF-134 commander was critical. Marine Reserve General Douglas Stone was a graduate of Culver Military Academy, the Naval Academy, and the Ranger, airborne, and scuba schools. After several years on active duty he moved into the reserves. He was an entrepreneur, a CEO of several start-up companies, and known as a practical, outside the box thinker, and successful

¹⁴⁷⁶ Ibid., pp. 134-135

¹⁴⁷⁷ Stone Interview.

¹⁴⁷⁸ Walter Hermes, *Truce Tent and the Fighting Front*, (Washington, DC: Office of the Chief of Military History, 1966), p. 243

¹⁴⁷⁹ *Field Manual 3-24: Counterinsurgency*, (Washington, DC: DOD, 2006), pp. 7-7 to 7-9

change management leader. In addition, he had several graduate degrees which included an MBA and a PhD.¹⁴⁸⁰

In 2003, Stone was mobilised to Pakistan as the senior US DOD representative to work with the US forces overall commander in Afghanistan, Lieutenant General David Barno. His experience in the AFPAK region convinced him the critical factor for successful operations was for US forces to understand the languages, cultures, and religions of the region. General Mattis tapped him to create and lead Mojave Viper, a Marine Corps training exercise focussed on the cultural training aspect of combat operations. He built mock villages, incorporated tribal concepts into exercises, and taught the importance of mutual respect and trust to be successful in working with tribes.¹⁴⁸¹

Stone was ready to retire when he was offered the job of Chief of Staff of MNF-I, but asked not to do a staff job if something else was available; he interviewed with General Petraeus for command of TF-134. Critics told Petraeus that Stone had no detention or interrogation experience, was a reservist with AFPAK experience, not Iraq experience. Marine General James Mattis, commander of the 1st Marine Expeditionary Force, endorsed Stone and Petraeus hired him; he appreciated Stone's education and business qualifications and realised the TF needed a paradigm shift.¹⁴⁸² Stone asked his AFPAK colleague, Colonel Anthony Lieto, to serve as his deputy.¹⁴⁸³ Stone would end up implementing the most thought out, deliberate detention corrections to date and would prove his detractors wrong.

On 7 April 2007,¹⁴⁸⁴ General Stone deployed to Iraq to assume command of TF-134's 9,000 personnel.¹⁴⁸⁵ General Petraeus mandated that incoming commanders

¹⁴⁸⁰ Douglas Stone, *Conference Biography-The Work Anywhere Symposium*, 22 September 2011

¹⁴⁸¹ Stone Interview.

¹⁴⁸² Ibid.

¹⁴⁸³ Ibid.

¹⁴⁸⁴ General Douglas Stone, *Official Biography*, Accessed 11 September 2011

¹⁴⁸⁵ Judy Miller, 'Iraqi Militants Becoming Citizens,' *Readers Digest*, July 2008

overlap one month with their predecessor in order to fully understand their job requirements. During his month with Gardner, Stone visited all the detention facilities, read books on US historical detention, COIN, human rights organisations, international law, and the ICRC.¹⁴⁸⁶ During April, there were 10,178 acts of detainee violence inside the prisons¹⁴⁸⁷ and recidivism rates were between six and nine per cent.¹⁴⁸⁸ Stone understood a new strategy was needed¹⁴⁸⁹ since the US detention camps had become ‘a breeding ground for extremists where Islamic militants recruit[ed] and train[ed] supporters, and use[d] violence against perceived foes.’¹⁴⁹⁰ Stone said his mission was to save lives by keeping hard-core militants from killing US troops.¹⁴⁹¹

General Stone assumed command of TF-134 on 5 May 2007.¹⁴⁹² Four days later, the worst riot to date in the US detention system in Iraq erupted at Camp Bucca. The camp commander called Stone and said he was about to be overrun by 10,000 detainees; he would have to resort to using live rounds and kill prisoners. The detainee to guard ratio at Bucca was 22 to one; by comparison, that ratio at GTMO was one to 22. Admiral Bill Fallon was visiting the camp that day when detainees set a fire and burned parts down. Stone refused to negotiate with the detainee leaders as Gardner had; he let them know they no longer controlled the camp. Stone phoned Petraeus during the day to update him on the situation and told him they were going to have to go lethal to secure the facility.¹⁴⁹³

The riot involved 5,000 to 10,000 detainees; several were killed and many were injured. This was a turning point for Stone.¹⁴⁹⁴ Two weeks later, he gave a

¹⁴⁸⁶ Stone Interview.

¹⁴⁸⁷ Ricks, *The Gamble*, p. 195

¹⁴⁸⁸ Mason Brooks and Drew Miller, ‘Inside the Detention Camps: A New Campaign in Iraq,’ *JFQ*, issue 52, 1st quarter, p. 132

¹⁴⁸⁹ Jeffrey Azarva, Author Interview, Washington DC, 5 February 2009

¹⁴⁹⁰ Ned Parker, ‘The Conflict in Iraq: Breeding ground for Exremists’, *LA Times*, 8 April 2007

¹⁴⁹¹ Miller

¹⁴⁹² Author Unknown, ‘Stone Assumes Command of MNF-I Detainee Operations,’ *MNFI Combined Press Information Center*, 9 May 2007

¹⁴⁹³ Stone Interview.

¹⁴⁹⁴ Azarva Interview.

comprehensive briefing including photographs and video of the fighting inside Camp Bucca to Petraeus, Crocker, and other senior officers. Stone's intent was to demonstrate that the current detainee warehousing policy was a strategic liability for the surge and could sabotage the entire campaign. When Stone finished, the room was silent. General Petraeus told the group: 'The president will be impeached, the surge will end . . . What do we do?'¹⁴⁹⁵ Stone's strategy would catapult detention operations to the end of phase four of the HDC and into phase five.¹⁴⁹⁶

The prison was a terrorist university. The TF did not have sufficient information on the detainees; once captured, a basic file was opened, and the prisoner was thrown into a pen. When the pens were too full, detainees were released to make room for the next batch. This process supported HDC phase four objectives to relieve an overwhelmed system but often let detainees go who should not have been freed.¹⁴⁹⁷

Stone approached the dilemma as a CEO. He analysed the problem as a businessman studying a challenging market. He said:

Everyone agreed that detention operations could destroy the surge but if the surge could be destroyed in a moment by what happened in detention, why couldn't it be made [succeed] in a moment in detention? What is the market opportunity here if these guys [detainees] turn from a strategic disadvantage to a strategic advantage?¹⁴⁹⁸

Stone consolidated all lessons learned and launched an exhaustive study of every detainee in order to understand who the US had in custody; he wanted to know what drove them, what they believed, and why they fought.¹⁴⁹⁹ Stone was an unconventional lateral thinker who rearranged information, flipping it on its head, in search of a new strategy.¹⁵⁰⁰

¹⁴⁹⁵ Stone Interview.

¹⁴⁹⁶ Ibid.

¹⁴⁹⁷ Ibid.

¹⁴⁹⁸ Ibid.

¹⁴⁹⁹ Ibid.

¹⁵⁰⁰ Barry Nalebuff and Ian Ayeres, *Why Not?* (Cambridge, MA: HBS Press, 2003), pp. 116-117

Stone and his staff crafted a survey to obtain a comprehensive profile of each detainee including education, employment, family history, religious, and ideological views. They were given to new detainees as they were processed in, and to detainees already in custody during their review.¹⁵⁰¹

Detainees appeared before the newly established Multi-National Forces Review Committee (MNFRC), a three-member board that provided them an opportunity to present their story and learn why they were being held.¹⁵⁰² The MNFRC did not win the approval of the human rights groups but it did provide the coalition with valuable information about insurgent networking and financing through the surveys. Every six months their case was reviewed.¹⁵⁰³ Prior to this board, detainees had nowhere to voice their concerns.¹⁵⁰⁴

During this time, the detainee population in Iraq bulged to its high water mark of more than 26,000, but Stone didn't release anyone until his study was complete and he knew whom he was releasing. In the meantime, surge operations continued and the cells filled up.¹⁵⁰⁵ (Appendix M)

After a few months of separating the hardcore ideological detainees from the moderates, the TF saw a marked change in detention operations; they began to have confidence the new strategy would actually work.¹⁵⁰⁶ After months of data collection, the TF learned that detainees viewed detention as another front in the war. Prison was a valuable place to recover, train, recruit, and spread radical Islamist ideology. The study also revealed some 70 per cent of detainees should not have been imprisoned at all.

¹⁵⁰¹ Stone Interview.

¹⁵⁰² Azarva

¹⁵⁰³ Sara Moore, 'Commander Sees Positive Trends in Iraq Detention Operations,' *AFPS*, 24 March 2008

¹⁵⁰⁴ Gerry Gilmore, 'Coalition Employs Anti-insurgent Tactics at Detention Facilities,' *AFPS*, 28 February 2008

¹⁵⁰⁵ Azarva Interview.

¹⁵⁰⁶ Ibid.

This finding sharply refuted General Ray Odierno's policy of arresting all military aged males.¹⁵⁰⁷

The study confirmed a diverse foreign fighter population of more than 300 detainees¹⁵⁰⁸ from Belgium, the Netherlands, Denmark, Egypt, Tunisia, Jordan, Saudi Arabia, Lebanon, Sudan, Spain, Libya, Mauritania, Morocco, Qatar, Yemen, and France.¹⁵⁰⁹ It also indicated there were roughly 4,000 hardcore Iraqi insurgents. As these elements were identified, they were segregated from the rest of the prisoners in hardened modular detainee housing units removed from the general population. This allowed the moderates to cooperate with the coalition without the fear of reprisals; it also allowed them to participate in educational and vocational programmes offered them.¹⁵¹⁰

The majority of the insurgents said they received permission from their family to engage in violence.¹⁵¹¹ The profile of the average insurgent was a 29-year-old Iraqi male, married with kids, unemployed, illiterate, and living at home. Crime and insurgency paid between US\$300 and US\$600 per month. A few fought for nationalistic reasons and a few fought because they were unemployed.¹⁵¹² Some fought to protect their families and communities since the Iraqi government and US troops were not able to protect them.¹⁵¹³ The least common reason was fighting for religion. The survey results convinced Petraeus that fixing detention was integral to the success of the strategic COIN plan.¹⁵¹⁴

Stone named his new detention paradigm 'COIN inside the wire' and determined the 'the battlefield of the mind' was the crucial COG. US troops and their allies were fighting the extremists for the minds of the moderates in the Islamic world.

¹⁵⁰⁷ Stone Interview.

¹⁵⁰⁸ Azarva Interview.

¹⁵⁰⁹ MG D.M. Stone, USMC, *Task Force (TF) 134 Command Brief*, 10 March 2009, slide 29

¹⁵¹⁰ Azarva Interview.

¹⁵¹¹ Ibid.

¹⁵¹² Stone Interview.

¹⁵¹³ Kilcullen, p. 70

¹⁵¹⁴ Stone Interview.

The exponential effect of winning over one individual who had an average of 100 people in their social network times the tens of thousands in custody could have an overwhelming effect on the overall surge strategy.¹⁵¹⁵

The TF knew what did not work in the past and needed to take the new information and craft the way ahead. Interrogation of hard-core insurgents was key because they had the information that drove the insurgency. Just as General Miller's 2003 recommendations articulated, Stone knew the war would be won through HUMINT; ergo, detention and intelligence collection were key and it was imperative they work together.¹⁵¹⁶ Stone crafted into his strategy a robust collection effort through the TF's JIDC.¹⁵¹⁷

The old detention paradigm indicated all detainees in custody were valuable because they were no longer a threat. In reality, only a few had value in terms of the information they held. The assessment illuminated who should be interrogated and who should be released.¹⁵¹⁸ After Abu Ghraib, it was politically incorrect to discuss the notion that MI and MPs should work together. But by the time General Stone took over, enough reform had taken place that it was safe to talk in these terms again even though this doctrine predated the events at Abu Ghraib.

The new plan had three phases: first, align detention operations with the greater COIN strategic plan and apply COIN principles inside the TIFs, separate extremists from the general detainee population, and protect the moderate detainees. Second, defeat the insurgency within the TIFs and focus on the 'battlefield of the mind' through identification of ideas contrary to extremist ideology. Third, engage detainee families

¹⁵¹⁵ Ibid.

¹⁵¹⁶ Ibid.

¹⁵¹⁷ *TF-134 Command Brief*, slides 22-26

¹⁵¹⁸ Stone Interview.

and release rehabilitated detainees. Moderate detainees returned home and empowered the ‘moderate ummah to marginalize the violent extremists within Iraq’.¹⁵¹⁹

Borrowing from the US-Nazi re-education programme of WWII, Stone began a de-radicalisation programme for moderate detainees. Many had been indoctrinated with Al-Qaeda and *Takfiri* teachings that twisted the moderate Islam on which they had been raised. To incorporate lessons learned, Stone visited the de-radicalisation programs in Saudi Arabia, Singapore, Indonesia, Yemen, and Egypt. TF-134 added a host of initiatives for both adult and juvenile detainees including courses in English, Arabic, Math, science, civics, geography, arts, and athletics, and started voluntary religious re-education discussions, a women’s programme, a mental health programme, textile and brick work-for-pay programmes, *Sunni-Shia* reconciliation discussions, and most importantly, family visitation programmes.¹⁵²⁰

For some detainees, the income they earned was crucial to their families’ survival; their loved ones showed up at the prisons to collect their pay. Stone was adamant the moderate detainees were given opportunities to touch their families, which had been prohibited in the past. The goal was to reestablish the familial bond and foster the detainees’ goal of returning home as their main objective.¹⁵²¹

Stone understood the need to strategically communicate his plan to multiple audiences among Iraqis, the Arab and Islamic world, US public opinion, and the US military. The Iraqis loved the plan; the old system bred extremists who wreaked havoc once released.¹⁵²² Stone met with each new TF-134 unit to personally explain the concept of COIN ‘inside the wire’ and convince them that educating detainees was crucial to the war effort.¹⁵²³

¹⁵¹⁹ TF-134 *Command Brief*, slide 18

¹⁵²⁰ *Ibid.*, slides 87 to 97

¹⁵²¹ Stone Interview.

¹⁵²² *Ibid.*

¹⁵²³ Azarva Interview.

Not everyone agreed with Stone's strategy; as word spread, critics attacked him for trying to make such sweeping changes. Reporters and military officers alike said his ideas would get soldiers killed. Attacks became ugly and personal; some told lies and tried to ruin Stone in order to stop him. This went on for nearly a year until some of the positive effects of his reforms took root. Right before he finished his tour, some of his most bitter critics praised him and admitted he had been right. Petraeus was the only one in the leadership who completely supported him through his whole tour of duty.¹⁵²⁴ Before he left he said: 'I'm not out here ... for social work ... We're out here because war is an act of force, and we're going to compel this enemy to do our will [a]nd our will is that the moderates are going to win out'.¹⁵²⁵

Detainee releases accelerated under the new programme. Even though the number of detainees in custody had climbed, the numbers of escapes, murders, tunnels, and riots dropped as the new programmes were implemented and received favourably by the detainees.¹⁵²⁶

A key component of the detainee programme was to work closely with the Iraqi government. Iraqi Vice President Tariq Al-Hashimi endorsed the new programme in a joint agreement between MNF-I and the Iraqi government.¹⁵²⁷ In their research, Stone's staff found a 1954 Iraqi law that required a citizen who took an oath to abide by it. An Iraqi judge reworked the language slightly and when detainees were released to their families and tribes, they signed an oath in front of a judge to not return to their former life that led them to prison.¹⁵²⁸ In December, the TF started to step up detainee releases and released 850 as part of the *Eid* holidays.¹⁵²⁹

¹⁵²⁴ Stone Interview.

¹⁵²⁵ Jamie Findlater, 'Experts Work to Understand, Change Terrorist Detainees' Minds,' *AFPS*, 18 September 2007

¹⁵²⁶ Stone Interview.

¹⁵²⁷ Findlater

¹⁵²⁸ Stone Interview.

¹⁵²⁹ Author Unknown, 'Troops Capture Special Groups Leader, Release Detainees,' *AFPS*, 20 December 2007

Another key to Iraqi cooperation was the Central Criminal Court of Iraq that had jurisdiction over the detainees. Stone said the judges were fair, judged evidence, imposed sentences and let people go if the evidence was not enough. The main challenge was keeping the judges alive as 26 had been killed between 2004 and 2007.¹⁵³⁰

As Stone's programmes were implemented, he stressed clarity and transparency when communicating the TF's goals and activities. He opened operations to inspection by any credible organisations; the ICRC, DOD, US Army, Iraqi Ministry of Human Rights, and foreign press were all welcomed. Stone said he had no secrets in his command.¹⁵³¹

In March 2008, Stone announced that the reforms of the previous year were trending in a positive direction. More than 6,000 detainees were released and only 12 were recaptured. Iraqi detainee-on-detainee violence in US facilities dropped drastically¹⁵³² from 10,178 in April 2007 to just 178 a year later.¹⁵³³ Stone was satisfied; he said the recapture rate was low because detainees committed themselves to rejecting violence and re-joining communities that embraced peace.¹⁵³⁴

After 12 months, the Iraqis were satisfied the US was finally releasing the right people. Families were reunited. Some detainees enjoyed the reforms and new programmes so much they did not want to be released; other families tried to get their loved ones into programmes at the prisons.¹⁵³⁵

General Stone hoped many of the reforms implemented in Iraq could be exported to Afghanistan where detention operations faced many challenges.¹⁵³⁶ In June 2008, he appraised his 14-month tour of duty and what his command accomplished with

¹⁵³⁰ Jim Garamone, 'Task Force Analyzes Detainees' Motivation in Iraq,' *AFPS*, 6 August 2007

¹⁵³¹ Sara Wood, 'Iraq Detention Operations Focus on Education, Rehabilitation,' *AFPS*, 10 October 2007

¹⁵³² Sara Moore, 'Commander Sees Positive Trends in Iraq Detention Operations,' *AFPS*, 24 March 2008

¹⁵³³ Ricks, p. 197

¹⁵³⁴ Moore

¹⁵³⁵ Stone Interview.

¹⁵³⁶ Ibid.

a sense of pride and relief.¹⁵³⁷ Before he left, he tried to implement one last reform: to pay released detainees between US\$200 to US\$300 to return to the TIFs and report on how they were doing.¹⁵³⁸

Stone said Petraeus was his greatest support, allowing him to do what needed to be done to turn things around.¹⁵³⁹ He would leave the command and the war effort in a better place after putting into effect an HDC phase three process that supported phase four releases and ultimately would help the US leave Iraq to the new Iraq government. At his change of command ceremony, Petraeus said: '[Stone] revolutionized the way we perform detainee operations in Iraq . . . his biggest idea was counter-insurgency inside the wire, because that was where the enemy was conducting its insurgency as well'.¹⁵⁴⁰

Despite great strides, detention operations were not risk free. By the time Stone left, 400 Purple Hearts for wounds received in detention operations had been awarded and 80 military personnel had lost their lives fighting 'inside the wire' since the war began.¹⁵⁴¹ After TF-134, Stone was offered a third star and command of all Marines Reserves,¹⁵⁴² but he chose to retire and return to the private sector.¹⁵⁴³

Admiral Wright assumed command on 6 June 2008¹⁵⁴⁴ and was a natural choice to succeed General Stone and lead detention during phase five of the HDC. Wright, a Naval Academy graduate and experienced commanding officer, had served as Stone's deputy during the previous past year and helped implement the new detention strategy. However, his command was cut short due to personal health reasons.¹⁵⁴⁵

¹⁵³⁷ Gerry Gilmore, 'Iraq Detention Centers Give Glimpse Into al-Qaida, General Says,' *AFPS*, 9 June 2008

¹⁵³⁸ Azarva Interview.

¹⁵³⁹ Stone Interview.

¹⁵⁴⁰ Joseph Giordono, 'Abu Ghraib reformer Stone hands over command of detainee system in Iraq Maj. Gen. Stone to be replaced by his deputy,' *Stars and Stripes*, 7 June 2008

¹⁵⁴¹ Stone Interview.

¹⁵⁴² Giordono

¹⁵⁴³ Press release, 'Technology Icon, Scott McNealy Sees Secure Computing Environments as an Answer to IT's Challenge of Consumerization,' *SCE Corporation*, 22 March 2011

¹⁵⁴⁴ Giordono

¹⁵⁴⁵ Azarva Interview.

By the time he left, the re-internment rate was down to less than one per cent¹⁵⁴⁶ from more than nine per cent in 2007¹⁵⁴⁷ and the detainee review committee was dealing with 700 cases per week. An average 37 detainees were sent home each day, many armed with literacy and new trade skills learned inside camp schools; some even left with monies earned while working in camp job programmes.¹⁵⁴⁸ Most significantly, detainee attitudes towards the US changed ‘inside the wire’. As US MPs treated detainees with respect and humanity, detainee behaviours changed and violence dropped inside the camps. Many detainees became pro-American as they learned to trust US soldiers and took advantage of the programmes offered the prisoners.¹⁵⁴⁹ Admiral Wright returned home and was appointed to several leadership positions within the DOD.¹⁵⁵⁰

On 8 October 2008, Brigadier General David Quantock, a career Army MP and Admiral Wright’s deputy was appointed Commander of TF-134.¹⁵⁵¹ His professional background prepared him to run detention operations and monitor the changes that had been implemented.¹⁵⁵² He explained: ‘The reconciliation [of detainees] starts inside the camps . . . we take the [COIN] model and we apply it to detainees . . . so the camps don’t become a recruiting ground and then they can reconcile for the most part among themselves before they get released’.¹⁵⁵³

On 31 December 2008, the UN mandate that authorised MNF-I since 2004 expired.¹⁵⁵⁴ The Bush Administration and the Iraqi government signed a new status of

¹⁵⁴⁶ Neal Fisher, ‘Coalition Detainee Operations Release Over 10,000 Men Recommitted to Rebuilding Iraq,’ *MNF-I*, 2 August 2008

¹⁵⁴⁷ Azarva

¹⁵⁴⁸ Michel Sauret, ‘Iraqi Detainees Return to Society Armed With Skills, Education,’ *AFPS*, 25 September 2008

¹⁵⁴⁹ Jennifer Messer, ‘Chestatee grad, guardsman saw Iraqi detainees change their views during his tour of duty,’ *Gainesville Times*, 9 January 2009

¹⁵⁵⁰ Admiral Garland Wright, Official Navy Biography, Current as of 12 October 2010

¹⁵⁵¹ Author Unknown, ‘New Commanding General of Detainee Operations,’ *MNF-I*, 9 October 2008

¹⁵⁵² General David Quantock, *Official Army Biography*, Current as of 3 January 2012

¹⁵⁵³ Tom Peter, ‘Iraqi courts to decide fate of America's detainees,’ *CSM*, 29 January 2009

¹⁵⁵⁴ Azarva

forces agreement (SOFA) as part of a three-year phased withdrawal from Iraq.¹⁵⁵⁵ The new SOFA had a significant impact on US detention operations and for the first time since 2003, the Iraqis were truly in charge of detention policy. Several key provisions affected detention operations from that point onward: Article 5(2) stipulated that US combat forces would withdraw from Iraqi cities by 30 June 2009.¹⁵⁵⁶ This drastically decreased the US footprint and put Iraqi security units fully in charge of their own cities, detainees, anti-government operations, and criminal elements. Article 3(2) specified that no person should be transported in or out of the country without express permission from the Iraqi government.¹⁵⁵⁷ This prevented detainees from being removed from the country without government approval.

Article 22 of the SOFA specifically dealt with detention and contained five main points: first, US forces could not detain Iraqis without government approval, based on Iraqi law. Second, if US forces detained an individual, they must be turned over to the Iraqis within 24 hours. Third, the Iraqi government may request US assistance in detaining certain individuals. Fourth, the US must provide to the Iraqi government a list of all detainees in US custody. The Iraqi government must issue arrest warrants for individuals wanted by the US government and the US must release detainees in US custody or turn them over to the Iraqi government. Fifth, except in the case of actual combat in support of official Iraqi operations, US forces may not enter Iraqi properties without an Iraqi warrant.¹⁵⁵⁸ These rules reasserted Iraqi sovereignty and paved the way for the US to withdraw from Iraq. The US drafted plans for an orderly transition that involved training Iraqi detention and security personnel and creating a schedule for facility turnover.

¹⁵⁵⁵ George Bush, 'US and Iraqi - Status of Forces Agreement,' 14 December 2008

¹⁵⁵⁶ Ibid, pp. 4-5

¹⁵⁵⁷ Ibid., p. 3

¹⁵⁵⁸ Ibid., pp. 18-19

Under General Quantock, HDC phase four turnover of detention facilities and the release of the 16,000 remaining prisoners were accelerated when the Iraqi government formed a special detainee commission to study each detainee case and release those held without sufficient evidence.¹⁵⁵⁹ Beginning February 2009, 1,500 detainees were transferred every month¹⁵⁶⁰ to one of the nine Iraqi government detention facilities inspected and approved of by the US Department of Justice.¹⁵⁶¹

Although the Iraqi prison system included several good facilities, namely those the US had set up and trained Iraqis to run, abuse and poor treatment was widespread under the Iraqis.¹⁵⁶² Detainees' level of care depended on what prison they were held in; the Iraqi Ministries of Interior, Justice, and Defence all had separate detention facilities, even though the CPA transferred all prisons to the Ministry of Justice.¹⁵⁶³ The Iraqi Human Rights Ministry recorded 500 instances of abuse in Iraqi prisons in 2009.¹⁵⁶⁴

General Quantock worked with the Iraqi justice ministry to allow the admission of forensic evidence, such as bomb residue and fingerprints, in Iraqi courts in addition to the standard two witness statements or a confession that was used to convict detainees. Since the change in the rules of evidence, conviction rates rose from 30 per cent in October 2008 to more than 90 per cent in 2009.¹⁵⁶⁵

In March 2009, Camp Taji TIF and Reconciliation Centre (TIFRC), part of the overall FOB Taji, expanded and upgraded its facilities in order to absorb detainees from Camp Bucca in preparation for its closure. It was a first class detention facility with its own airfield; detainees were flown directly to the TIFRC. Detainees were initially held in modular detainee housing units, but were eventually moved to cell blocks in larger

¹⁵⁵⁹ Author Unknown, 'Iraqi Commission Formed To Take Detainees From U.S. Forces,' *Radio Free Europe*, 14 January 2009

¹⁵⁶⁰ Azarva Interview.

¹⁵⁶¹ Rania Abouzeid, 'In the Waterfront: The U.S. Prison for Iraq's Worst Prisoners Prepares to Close,' *Time*, 15 March 2009

¹⁵⁶² Qassim Abdul-Zahra, 'Iraq unveils results of prison abuse investigation,' *AP*, 17 June 2009

¹⁵⁶³ Author Unknown, 'Iraqi prisoners on hunger strike at Basra jail,' *AFP*, 19 February 2010

¹⁵⁶⁴ Leila Fadel and Uthman Mukhtar, 'Iraqis demand answers in deaths of 6 detainees who died during transport,' *WP*, 20 May 2010

¹⁵⁶⁵ Abouzeid

hangers known as k-spans, a term deemed more politically correct than prison or cell. Eventually 5,000 detainees were brought in and 20 men were placed in each cell; each k-span held 200 to 300 detainees, segregated by security risk such as *Takfiris*, *Sunni*, *Shiite*, and various threat levels. Detainees wore coloured clothing based on their level of compliance. Green meant compliant, red indicated hard-core *Takfiri*, yellow signified moderate compliance; most *Shiite* detainees wore yellow. Cameras recorded every move the guards and prisoners made.¹⁵⁶⁶

When there were issues inside the k-spans, detainee zone chiefs helped resolve problems; although they did not run the prison as they had prior to General Stone, they still served a useful purpose liaising with US MPs.¹⁵⁶⁷ Detainees who wanted to learn to read, write, and do basic math could take classes. MPs continued to train Iraqi correctional officers to handle detainees once the final handover was completed.¹⁵⁶⁸

In April 2009, the Iraqi government asked the US to slowdown the transfer of detainees from 1,500 to 750 per month; they had trouble absorbing the prisoners so quickly.¹⁵⁶⁹ To promote Iraqi holding capacity, the eleventh and final class of US-trained Iraqi correctional officers graduated in May and assumed their duties at Camp Bucca.¹⁵⁷⁰ Going forward, Iraqis trained their own correctional officers at their training academy at Camp Victory.¹⁵⁷¹ The US assisted with training in non-lethal tactics such as tasers, rubber bullets, stun grenades, and running the vocational programmes.¹⁵⁷²

Release involved some element of risk; reports from police chiefs, officials in the Interior ministry, and residents indicated some recently released detainees returned to fighting in *Sunni* and *Shiite* militias. Others were recruited while in prison. One detainee from Camp Bucca claimed to have recruited 80 others in prison. When deadly

¹⁵⁶⁶ Military #5, Author Interview, Norfolk, VA, 6 April 2011

¹⁵⁶⁷ Ibid.

¹⁵⁶⁸ Ibid.

¹⁵⁶⁹ Richard Tomkins, 'Iraqi detainee numbers lessen,' *UPI*, 16 July 2009

¹⁵⁷⁰ Author Unknown, 'Final class of U.S.-trained Iraqi prison guards graduates from Camp Bucca,' *Stars and Stripes*, 12 May 2009

¹⁵⁷¹ Tyler Lasure, 'Wisconsin Guard Helps Iraqis Train Corrections Officers,' *AFPS*, 20 July 2009

¹⁵⁷² Jason Keyser, 'US military training Iraqi prison guards,' *AP*, 18 September 2009

bombings began just weeks after the detainee releases, the Iraqi government combed through lists of recently released prisoners for clues.¹⁵⁷³

In April, during the release of 4,500 detainees, the Iraqi government issued 400 arrest warrants in order to prevent the release of dangerous prisoners.¹⁵⁷⁴ The US scrambled to assemble evidence to stop another 3,000 high threat detainees from going free.¹⁵⁷⁵ Attacks continued throughout summer 2009 as more violent detainees were released.¹⁵⁷⁶ Other detainees were killed in tribal retribution as soon as they got out of prison and some families paid blood money to keep their sons alive. This caused some detainees to return to extremist groups for protection or attempt to stay in prison.¹⁵⁷⁷

In August 2009, in keeping with the Obama Administration's policy of detention transparency, the DOD authorised a major change for SOF holding detainees. Previously the SOF temporary screening detention site at Balad Air Base held detainees without notifying the ICRC until they were turned over to a TIF. The new policy mandated that every unit must provide the ICRC with detainees' names and ISNs within two weeks of capture. The ability to request a custody extension was terminated.¹⁵⁷⁸

A major milestone achieved during Quantock's tenure was the closing of Camp Bucca. On 17 September 2009, the last 180 detainees were flown to Baghdad and the camp was shuttered.¹⁵⁷⁹ The only remaining US detention facilities were Camps Cropper and Taji near Baghdad.¹⁵⁸⁰ By the end of November 2009, the total recidivism rate of US-released detainees since 2004 averaged four per cent; it had risen due to the release of violent detainees the Iraqis refused to lock up.¹⁵⁸¹ The NPDB 2 and 3 stationed at Bucca

¹⁵⁷³ Anthony Shadid, 'In Iraq, Chaos Feared as U.S. Closes Prison,' *WP*, 22 March 2009

¹⁵⁷⁴ Author Unknown, 'US in Iraq says it holds fewer than 12,000 Prisoners,' *AFP*, 5 May 2009

¹⁵⁷⁵ Lara Jakes, 'Iraqi detainees to be released over summer,' *AP*, 19 March 2009

¹⁵⁷⁶ Author Unknown, 'Iraq blames Al Qaida revival on U.S. release of 4,000 insurgents,' *World Tribune*, 7 May 2009

¹⁵⁷⁷ Suadad al-Salhy, 'Facing Death, Freed Iraq Detainees May Fight Again,' *Reuters*, 16 February 2010

¹⁵⁷⁸ Eric Schmitt, 'U.S. Shifts, Giving Detainee Names to the Red Cross,' *NYT*, 22 August 2009

¹⁵⁷⁹ Author Unknown, 'Camp Bucca Detention Center Closes in Iraq,' *AFPS*, 17 September 2009

¹⁵⁸⁰ Maurina

¹⁵⁸¹ Author Unknown, 'Iraq: Released Detainees Joined Al-Qaida,' *AFP*, 18 May 2010

moved to support Taji operations once Bucca shut down.¹⁵⁸² The Basra Investment Commission leased the facilities at Bucca to a joint US-Iraqi investment group for US\$245 million for 40 years; it was turned into a commercial industrial centre.¹⁵⁸³

On 1 January 2010, General Quantock cased the colours and formally deactivated TF-134 as part of the deactivation of MNF-I and the creation of the new command, United States Force-Iraq (USF-I). Since 15 April 2004, the TF had served a vital function in the war effort.¹⁵⁸⁴ In February the US government announced that OIF would officially end on 1 September and the new mission would be called 'Operation New Dawn'.¹⁵⁸⁵ Quantock served a few more months and transitioned the remaining detention operations to the incoming head of detention operations and PMG for USF-I, Major General Nelson Cannon.¹⁵⁸⁶ At this point, the Iraqi government held 44,000 detainees and struggled to manage their detention responsibilities.¹⁵⁸⁷

On 15 March 2010, the US turned FOB Taji TIFRC, with 2,900 mostly low-level detainees, over to the Iraqis. The US only had one detention facility left in Iraq, Camp Cropper, with 2,900 detainees.¹⁵⁸⁸ The facility underwent a US\$70 million upgrade and was transformed into a rehabilitation centre to teach detainees new skills and help them become productive citizens upon release.¹⁵⁸⁹

General Nelson Cannon, a Vietnam War Marine combat veteran and Army National Guard MP,¹⁵⁹⁰ served as the JDOG at GTMO from July 2003 to August 2004, and as the Director General for the Civilian Police Assistance Training Team in Iraq

¹⁵⁸² Military #5, Author Interview, Norfolk, VA, 6 April 2011

¹⁵⁸³ Author Unknown, 'Former Iraqi prison camp will be commercial center,' *AP*, 20 December 2010

¹⁵⁸⁴ Luke Koladish and Kat Briere, 'New command marks milestone in Iraq,' *Army.mil*, 2 January 2010

¹⁵⁸⁵ Greg Jaffe, 'War in Iraq will be called "Operation New Dawn" to reflect reduced U.S. role,' *WP*, 19 February 2010

¹⁵⁸⁶ Scott Harris, 'U.S. turns Taji detention facility over to Iraqi government,' *CENTCOM*, 15 March 2010

¹⁵⁸⁷ Author Unknown, 'Iraqi prisoners on hunger strike at Basra jail,' *AFPS*, 19 February 2010

¹⁵⁸⁸ Author Unknown, 'US military hands over prison to Iraqi government,' *AP*, 15 March 2010

¹⁵⁸⁹ Harris

¹⁵⁹⁰ General Nelson Cannon, Official Biography, National Guard Bureau, Current as of November 2011

from May 2008 to May 2009.¹⁵⁹¹ To facilitate the transfer of Camp Cropper, he held a detention transfer conference 21 to 23 April at FOB Taji. The conference addressed proper detention operational procedures and the transfer of custody of detainees from the US to the Iraqis. Cropper was a top tier facility, with sophisticated life support equipment, logistical functions, medical care, staff support, and correctional officer facilities. The ability to handle these essential functions was critical to a successful transfer to the Iraqis.¹⁵⁹²

In May 2010, an Iraqi General said 80 per cent of former US detainees had returned to fighting.¹⁵⁹³ Under the SOFA, detainees were turned over to the Iraqis within 24 hours with a detainment file, but if the Iraqis let them go, there was nothing the US forces could do about it. The US detention operations task force estimated that the Iraqis should not have released close to 4,000 high threat detainees; the outcome was predictable: an uptick in violence. Once some of these former detainees were re-captured, the Iraqis learned they were recruited inside the prisons where they plotted new attacks.¹⁵⁹⁴

On 15 July 2010, the last US detention facility in Iraq, TIF Cropper,¹⁵⁹⁵ was turned over to the Iraqis and renamed Karkh Prison.¹⁵⁹⁶ At the request of the Iraqi government, the US retained control of the HVD section until US forces left the country at the end of 2011. The US continued to train Iraqis in detention operations and international standards for human rights. The US wanted to do all it could to help the Iraqis provide a similar standard of care to their detainees as the US had provided them, but between 2008 and 2010, the Iraqi Human Rights Ministry confirmed hundreds of

¹⁵⁹¹ Ibid.

¹⁵⁹² Charon Camarasa, 'USF-I Deputy Commanding General holds the First Cropper TIF Transfer Conference,' *DVIDS*, 23 April 2010

¹⁵⁹³ Martin Chulov, 'Iraq prison system blamed for big rise in al-Qaida violence,' *Guardian*, 23 May 2010

¹⁵⁹⁴ Ibid.

¹⁵⁹⁵ Author Unknown, 'Iraqis take over last major U.S. operated detention facility', *USFI-PAO*, 15 July 2010

¹⁵⁹⁶ Author Unknown, 'Iraqis take over last major U.S. operated detention facility,'

torture cases at Iraqi facilities including one secret prison.¹⁵⁹⁷ Just five days after Cropper was turned over, four Al-Qaeda members escaped. The Karkh warden was also missing.¹⁵⁹⁸ In September 2010, four more Al-Qaeda detainees escaped.¹⁵⁹⁹

HDC Phase V: End of Conflict Detention Operational Lessons Are Recorded

On 31 August 2010, President Obama declared the end of major combat operations in Iraq, the end of OIF,¹⁶⁰⁰ and the beginning of Operation New Dawn on September 1; the US began transitioning all remaining operations to the Iraqi government.¹⁶⁰¹ Secretary of Defence Robert Gates said history would judge whether the mission was worth it, but the US military could be proud of what it had accomplished.¹⁶⁰² Despite the end of US combat operations, two US soldiers were killed 7 September.¹⁶⁰³

On 13 September, a report by Amnesty International confirmed allegations of Iraqi prison mistreatment including: abuse by interrogators and detention personnel such as rape, the threat of rape, beating with cables and hosepipes, prolonged suspension by the limbs, electric shocks, breaking of limbs, removal of toenails with pliers, asphyxiation using a plastic bag over the head, piercing the body with drills, and being forced to sit on sharp objects.¹⁶⁰⁴ Detainees who had previously been in US custody acknowledged treatment by the Iraqi government was more abhorrent.¹⁶⁰⁵

The Amnesty report said the turnover of detention facilities to Iraqi control by the US was a violation of international law and 'In carrying out the transfer of more than 10,000 Iraqis into the hands of the US-backed regime in Baghdad, the Obama Administration is complicit in crimes even more horrific than those committed under

¹⁵⁹⁷ Leila Fadel, 'Some worry about abuse as U.S. hands over final detention center to Iraq,' *WP*, 16 July 2010

¹⁵⁹⁸ Author Unknown, 'Escaped Iraq detainees are Qaeda suspects: police,' *AFP*, 23 July 2010

¹⁵⁹⁹ Janine Zacharia, '4 Iraqi detainees escape from U.S. custody in Baghdad,' *WP*, 9 September 2010

¹⁶⁰⁰ Anne Kornblut, 'Obama declares that combat in Iraq is over,' *WP*, 31 August 2010

¹⁶⁰¹ Donna Miles, 'Biden Visits Iraq to Mark Operation New Dawn,' *AFPS*, 31 August 2010

¹⁶⁰² Anne Gearan, 'Gates Says History will Judge Iraq War's Worth,' *AP*, 1 September 2010

¹⁶⁰³ Steven Myers, 'G.I. Deaths Are First for U.S. After Combat Mission's End,' *NYT*, 7 September 2010

¹⁶⁰⁴ Bill Van Auken, 'US transfer of Iraqi prisoners: an ongoing war crime,' *WSWS*, 15 September 2010

¹⁶⁰⁵ Peter Boaz, 'Detainees in Iraq Go from Frying Pan to Fire,' *IPS*, 15 September 2010

the Bush Administration by US forces at Abu Ghraib'.¹⁶⁰⁶ Amnesty claimed US officials had been sufficiently warned of what the Iraqis would do to their prisoners. Between 2005 and 2009, US soldiers reported 1,365 instances of detainee abuse by Iraqi forces.¹⁶⁰⁷

One of General Cannon's last acts as detention commander was to oversee the transfer of millions of dollars of equipment to the Iraqis. The US donated 100 vehicles including small-motorised carts and buses to the Iraqi Corrections Service, a division of the Ministry of Justice. These vehicles were crucial to prisoner transport operations. The US contributed an additional 22 shipping containers of detention-related equipment to help the Iraqis run operations.¹⁶⁰⁸

On 14 February 2011, the DOD announced the assignment of the last detention commander for USF-I, Major General Adolph McQueen,¹⁶⁰⁹ a former JDOG leader at GTMO and commander of all Army Reserve MPs;¹⁶¹⁰ He would lead detention operations through the end of HDC phase five in-country ensuring the knowledge gained would be brought back home for future conflicts. It is ironic that a reserve general (BG Hill) led detention operations at the outbreak of the war in 2003 and that another (MG McQueen) was the last at the end of the war in 2011. McQueen oversaw the final training and transitioning of Iraqi corrections and interrogation officers and the turnover of the last 200 US detainees. On 1 May, McQueen presented graduation certificates to the ninth and final class of graduates of the basic interrogator course and the third interrogator instructor course. The US trained a total of 88 basic interrogator

¹⁶⁰⁶ Ibid.

¹⁶⁰⁷ Noel Brinkerhoff, 'Obama Administration Ignored Torture Warnings and Transferred Detainees to Iraqi Authorities,' *AllGov*, 26 October 2010

¹⁶⁰⁸ A.M LaVey, 'USF-I Provost Marshal Office turns over vehicles to Iraqi Corrections Service,' *Army.mil*, 24 March 2011

¹⁶⁰⁹ *General Officer Announcements*, Press release #117-11, 14 February 2011, Office of the Assistant Secretary of Defense for Public Affairs, DOD, Washington DC

¹⁶¹⁰ Lisa Rhodes, 'The Man for the Job: New commanding general leads 200th Military Police Command,' *army.mil*, 11 March 2011

students and 21 interrogator instructors.¹⁶¹¹ In April, he visited Karkh Prison, (formerly Camp Cropper) where US forces still controlled 200 HVDs at the Iraqi government's request. McQueen said his goal was to maintain high standards and ensure a smooth turnover. He praised operations at Karkh and said the Iraqis were applying the right standards.¹⁶¹²

On 14 November 2011, Army Specialist David Hickman was the last US soldier to die in Iraq; he was killed by an IED.¹⁶¹³ One month later on 15 December 2011, the final USF-I commander, General Lloyd Austin, cased the American colours and declared the US mission in Iraq over.¹⁶¹⁴ The next day, Camp Adder near Nassariya, the last of 505 US bases, was turned over to the Iraqis.¹⁶¹⁵

Later that day, the last US enemy combatant in Iraq,¹⁶¹⁶ Ali Musa Daqduq, was taken into custody by Iraqi authorities. Daqduq was a Lebanese *Hezbollah* commander who killed five US Soldiers in 2007¹⁶¹⁷ and the Obama Administration asserted their intention to prosecute him in a military tribunal in Charleston, South Carolina, but cited the 2008 SOFA restrictions on transferring prisoners out of the country without permission.¹⁶¹⁸ The following day, Iraqi authorities charged Daqduq with illegally entering the country on a forged passport, a charge that carried a five-year prison term.¹⁶¹⁹ The detention mission in Iraq was finally over.

Sunday morning, 18 December 2011, the last 500 US troops crossed the border into Kuwait just before 8:00 AM and locked the gate behind them.¹⁶²⁰ Only 157 soldiers

¹⁶¹¹ Paul Holston, 'Iraqi personnel graduate basic interrogator, instructor courses,' *army.mil*, 7 May 2011

¹⁶¹² Charlene Mendiola, 'Detainee ops chief gives Karkh prison good reviews,' *Army.mil*, 7 May 2011

¹⁶¹³ Craig Johnson, 'N.C. soldier reportedly last to die in Iraq war,' *CNN*, 16 December 2011

¹⁶¹⁴ Laura Rozen, 'U.S. lowers flag, marking official end to Iraq war,' *Envoy*, 15 December 2011

¹⁶¹⁵ Author Unknown, 'Last US Base Handed to Iraq Ahead of Pullout,' *AFP*, 16 December 2011

¹⁶¹⁶ Sarah Aarthun and Adam Levine, 'Suspect in soldier killings given back to Iraqis,' *CNN*, 16 December 2011

¹⁶¹⁷ Author Unknown, 'Iraq Balks at Handing Over Militant to US,' *UPI*, 24 November 2011

¹⁶¹⁸ Charlie Savage, 'U.S. Transfers Last Prisoner to Iraqi Government,' *NYT*, 16 December 2011

¹⁶¹⁹ Author Unknown, 'Hezbollah Prisoner Held by Iraq Faces Minor Charge,' *AP*, 17 December 2011

¹⁶²⁰ Basu

remained in Iraq as part of a US Embassy training team.¹⁶²¹ Approximately 100,000 to 120,000 POWs, ECs, and detainees were held in US custody during the course of the war; it was the largest US prisoner mission since the Korean War.¹⁶²²

Conclusion

On 20 December 2011, General Austin returned the US colours to Andrews Air Force Base. He said: ‘What our troops achieved in Iraq over the course of nearly nine years is truly remarkable . . . Together with our coalition partners and core of dedicated civilians; they removed a brutal dictator and gave the Iraqi people their freedom’.¹⁶²³

The war in Iraq followed the predictable phase one of the HDC, with the exception, or rather, addition of an element of foreign fighter enemy combatants mixed into standard POW operations. Phase two of the HDC was a watershed event, not only in Iraq, but for the entire DOD, as events at the Abu Ghraib prison impacted the GWOT effort at all levels, strategic, operational, and tactical, and greatly influenced the Iraqi population, the American public, and international opinion.

Phases three and four of the HDC saw dramatic shifts in detention policy as the US adapted to the insurgency that swept the country. General Douglas Stone made extensive changes to detention operations, moving policy from detain, hold, release to detain, segregate, hold, rehabilitate, and release. His COIN ‘inside the wire’ strategy saved the surge campaign from collapsing as detention operations reached a violent climax in spring 2007. In phase five of the HDC, the US began Operation New Dawn, transitioned detainee operations to the Iraqi government, and concluded with the withdrawal of US forces in December 2011 per the SOFA signed in December 2008 by President Bush. In phase seven of the HDC, units returned home and began documenting the lessons learned from the Iraq war.

¹⁶²¹ Author Unknown, ‘Last US Base Handed to Iraq Ahead of Pullout’

¹⁶²² Abbie Boudreau and Scott Zamost, ‘Army general defends rules for detainees,’ *CNN*, 21 November 2009

¹⁶²³ Julie Pace, ‘Obama, Biden Welcome Home Last Troops From Iraq,’ *AP*, 20 December 2011

It was fitting that General Quantock, who took over Abu Ghraib prison from General Karpinski in 2004 after the scandal and later led TF-134 toward the end of the war, became the PMG for the Army, based at the Pentagon, and would be responsible to oversee the recording of final lessons learned in detention operations in the war.

Conclusion

Any discussion of interrogation techniques must begin with the simple reality that their purpose is to gain intelligence that will protect the United States, its forces and interests abroad . . . Interrogations are inherently unpleasant, and many people find them objectionable by their very nature.

- James R. Schlesinger, Former US Secretary of Defence¹⁶²⁴

From General George Washington's implementation of humane treatment policy for Hessian and British soldiers during the Revolutionary War to the reforms implemented globally in US detention operations following the Abu Ghraib scandal in Iraq, the US detention experience has been wide ranging. While the reforms of the past decade are typically credited to the leadership of senior military officers and civilian policy makers, much of the praise should be doled out to the young soldiers, sailors, airmen, and marines who went 'inside the wire', to conduct transparent and humane detention operations in extremely dangerous and difficult conditions. Only a few violated their oaths of service and abused detainees in their custody. Some paid with their lives, others were seriously wounded, all walked away forever changed by what they experienced.

Getting detention right in counterinsurgency and counterterrorism operations is a key component to winning the overall effort and potentially shortening a conflict. In comparing Dr. David Kilcullen's accidental guerrilla syndrome with the historic detention cycle, the third phase, intervention by the counterinsurgent, is directly linked to the phase three of the HDC, mistakes are made in detainee handling. These intersect at a critical moment in a counterinsurgency campaign that can prolong or pare a war depending on what actions are taken. If detention operations are done correctly and the

¹⁶²⁴ James Schlesinger, Former Secretary of Defence, *Final Report of the Independent Panel to Review DoD Detention Operations*, (Washington, DC: DOD, 24 August 2004)

right people are detained, the population can potentially be won over. If innocents are detained and the policy persists, detention facilities become a breeding ground where insurgents recover, rebuild, and recruit, lengthening the war, and raising the costs to the counterinsurgent force in terms of blood and treasure.

Afghanistan

Thus far, the war in Afghanistan has followed the HDC similar to wars past. The US is still working through the cycle, stalled in phase three and four, awaiting Afghan detention training and turnover of facilities to catch up to international standards. In phases one of the HDC, the US invaded Afghanistan and US forces detained Taliban and Al-Qaeda fighters and sent many to GTMO. A large percentage of those detained were of minimal intelligence value and should have been released in Afghanistan before ever leaving the country. The historical record indicates there was some thought to initial tactical detention operations, but very little planning of long term strategic detention or determination of what the status of non-Geneva Convention detainees would ultimately be.

Just as in wars past, detainees overwhelmed the system in Afghanistan; the two initial theatre level detention-holding facilities in Bagram and Kandahar were inadequate for the sheer number of detainees. In phase two, detainees were moved to GTMO and the Kandahar short term holding facility was closed, but detainees continued to be held at the Bagram Collection Point. It was a spartan, secretive facility, and those factors contributed to the deaths of several detainees. In phase three of the HDC, JTF-180 instituted corrections in detention operations at Bagram. While the debate over legal status of detainees continued in the courts, there were on-going discussions as to what techniques beyond the Army interrogation field manual were allowed and the military re-asserted better control over those who conducted detention operations.

Phase three continued for many years as the US worked to get the detention process right. While care and feeding improved quickly at GTMO and the Iraq facilities, the Bagram Collection Point continued to lag behind in reforms and received few upgrades compared to facilities in Iraq and Cuba.

During phase three, General Stone, the detention turn-around commander from Iraq, completed an extensive study of both the US and Afghan prison systems and recommended radical changes based on the success of his 2007 Iraq detention strategy. Many detainees were released, a state of the art facility was built, and hard core insurgents were segregated from the accidental guerrillas; many detainees were equipped with educational and vocational training and took an oath not to return to the fight. Afghan guards and rule of law and intelligence personnel were trained, which led to the best detention situation since the invasion.

Guantanamo Bay

The US prison facility at GTMO is one of the most transparent prisons in the world.¹⁶²⁵ A Belgian official who inspected GTMO five times called it ‘a model prison offering better treatment than Belgian prisoners receive’.¹⁶²⁶ Since January 2002, the ICRC has been on the ground engaged with US detention officials to oversee the needs of the detainees;¹⁶²⁷ it has not visited a Cuban government prison since 1989.¹⁶²⁸

Just as Spandau Prison was set aside for a specific purpose after WWII to house war criminals of the Nazi regime,¹⁶²⁹ GTMO was built for a specific purpose: to detain enemy combatants of the GWOT, produce actionable intelligence, and serve as a long term prison for those who have gone through military tribunals and are not releasable.

¹⁶²⁵ Gordon Cucullu, *Inside GTMO*, (NYC: Harper Collins Publishers, 2009), p. 42

¹⁶²⁶ George Bush, *Decision Points*, (NYC: Crown Publishers, 2010), p. 166

¹⁶²⁷ Staff Judge Advocate, *JTF-160, Initial Observations From ICRC Concerning Treatment Of Detainees* (Guantanamo Bay, Cuba, 21 January 2002),

¹⁶²⁸ Stephanie Nebehay, ‘Cuba urged at U.N. to release political prisoners,’ *Reuters*, 5 February 2009

¹⁶²⁹ Norman Goda, *Tales from Spandau*, (NYC: Cambridge University Press, 2007), pp. 25-27

The first two phases of the HDC dominated the first ten months of operations at GTMO. As old and new doctrine and policy collided, the situation was at times a perfect storm of confusion. Law enforcement agencies, the US military, and other government agencies were tasked with separate and competing missions and were under extreme pressure to do it right, do it quickly, and do it during a debate of unclear legal and operational guidance that changed and evolved as the operation progressed. Human resources with the right skill sets to fulfil mission requirements were extremely limited; as a result, unskilled, mostly well-meaning personnel, attempted to do the best they could. Additionally, CENTCOM focussed only on the tactical and operational detention mission and completely ignored the strategic interrogation mission they had wrongly pushed off on an ill-equipped SOUTHCOM.

Under General Dunlavey, Miller and Hood, GTMO passed through the initial HDC phases and entered phase three just as he left command; the detention and intelligence task forces were combined and many corrections were made. General Miller completed many of the initiatives of his predecessor and detention operations at GTMO ran more smoothly. Lessons learned from the mistakes made at Abu Ghraib and the recommendations from 12 major detention operations investigations were synthesised and provided ample course corrections to make GTMO an efficient, humane, and transparent facility. Although President Obama vowed to close GTMO in his 2008 campaign, the US public and Congress supported keeping it open for the foreseeable future. Facilities continued to be upgraded to care for the long-term detention of inmates and prepare for upcoming commissions.

Iraq

In 2002 and 2003, the US prepared for a traditional, tactical detention mission in Iraq, which was carried out during phase one of the HDC. With the exception of some foreign fighter enemy combatants, most of the detainees were Shiite Iraqi Army

conscripts who were happy to be captured and sent home. The mostly Sunni-Ba'ath party officials and officer corps were the HVDs. Phase two of the HDC was a watershed for detention operations in Iraq and throughout all US detention facilities in the GWOT. As the insurgency got underway and lawlessness reigned on the streets, US facilities were quickly overwhelmed with 'security detainees' comprised of criminal elements and Iraqi and foreign insurgents.

The events that took place at Abu Ghraib prison in autumn 2003 impacted the war effort at all levels: strategic, operational, and tactical. It prolonged the war, turned many Iraqis against the US, diminished American popular support, and devastated the image of the US internationally. Any goodwill the US was credited for capturing Saddam Hussein in December 2003 by the Iraqi people evaporated in early 2004 in the wake of media reports of abuse of detainees in US custody.

Phase three of the HDC in Iraq saw dramatic shifts in detention policy as the US adapted to the insurgency that swept the country and implemented hundreds of recommendations from a dozen detention investigations. General Stone made sweeping changes in detention operations; the US moved from the 'detain, hold, release' policy to a 'detain, segregate, hold, rehabilitate, and release policy'. Detention facilities had become recruiting and training grounds for the insurgency; the new COIN 'inside the wire' strategy mandated that hard-core insurgents be separated from the general prison population. The new strategy saved the surge campaign, diminished violence inside the prisons, and provided rehabilitation for detainees interested in educational and vocational training administered at detention facilities.

In phase four of the HDC, the US transitioned from OIF to Operation New Dawn and prepared Iraqi troops for the withdrawal of US forces per the SOFA signed in December 2008 by President Bush. By 18 December 2011, US troops had withdrawn from Iraq, save a few advisors working out of the US Embassy. The Iraq war was the

first conflict since 9/11 to reach phase five of the HDC where military historians and analysts could begin to record the end of campaign lessons learned in detainee handling operations.

What Matters Most in Detention Operations?

The lessons learned throughout US detention history have been purchased with the blood of US military personnel and the treasure of the citizens of the nation; therefore the lesson learned should not be forgotten. In order to prepare for future conflicts and not repeat mistakes of the past, these lessons must be recorded, codified into doctrine, taught, studied, and practiced. During peacetime, units must continue to train for the detention mission. The crux of phase seven of the HDC is that the US military is a learning organisation and military doctrine evolves based on experience. The following major lessons learned in detention operation are vital considerations for future war planners and policy makers.

The Historic Detention Cycle (HDC) Matters

Mistakes in detention are repeated throughout history. Since the Revolutionary War, the status of captured prisoners has been recurring in most US conflicts. Within five to ten years of the end of each conflict, the US military forgets many of the hard learned lessons in detention. Personnel with detention expertise retire and new priorities push to the front of the Department of Defence agenda. War planners should bring detention experts out of retirement to advise and assist operations early on before bad decisions are made.

Human Psychology Matters

Those who work in detention operation are asked to do a thankless, and what often times seems unimportant job; in reality, it is integral to the war. Human nature is such that even moral people, when given a little authority, tend to abuse their power if not properly supervised. As the Stanford prison study demonstrated and Abu Ghraib

confirmed, the situation can deteriorate quickly. It is vital that leaders safeguard provisions of oversight, adherence to standard operating procedures, and understanding of doctrine to ensure humane, legal, and transparent detention operations.

Planning Matters

Deliberate long-term planning needs to take place. US strategic guidance calls for planning at the unified command level. It should not be an afterthought buried in some war plan annex. The Provost Martial General (PMG) and Intel (J-2) should be involved from the start. Detention planners must beware of inexperience and reach out to retired experts if available. They should not underestimate the number of prisoners, how long they will remain in custody, or the cost of detainee care. When in doubt, over estimate on the high side of how much resources will be needed.

Unity of Command Matters

There are two main functions of detention operations: to collect intelligence and to hold detainees away from the fighting. Early on at GTMO, the functions were separated by competing command structures in two TFs with separate missions. This caused confusion and harmed the operation, but the problem was eventually overcome by merging the TFs and appointing a single commander. Had the historical record been consulted, planners would have noted a similar error was made and overcome in US strategic detention operations during WWII. The detainee task force should have been set up as a CJIATF since law enforcement agencies and international partners participated in the detention mission. While the CJIATF construct had not been fully delineated in doctrine at the start of the war, the combined and joint lessons learned from Somalia and the Balkan conflicts were a decade old and could have been applied.

Leadership Matters

Mistakes in detention can have far reaching ripple effects on the military operation and political apparatus at home. Selecting the right leader for the detention mission sends the message to US forces as well as the enemy that detention operations are integral to the war effort. High ranking war fighters such as General Stone, Admiral Harward, and General Huber left no doubt about the US commitment to doing detention correctly.

Strategic Communications and Transparency Matter

Countries involved in war have the right to detain enemy combatants and belligerents. They do not have to apologise for taking prisoners; however, by working with the ICRC and being open with the media, the detaining power ensures the cultivation of a safe, humane, and transparent operation. The less secretive a facility, the less the enemy can exploit it for propaganda.

Detention Resources Matter

War planners must budget for expensive long-term detention. Detainees must be placed in a safe, transparent, and humane environment; if not, the cost will be far greater in the long run. Language, cultural, and HUMINT resources must be dedicated to detention operations, even in peacetime. When transitions occur, new personnel need time to get up to speed by overlapping with experienced personnel; a proper relief in place transfer of authority/handover-takeover (RIPTOA/HOTO) is crucial and also prevents experienced detainees from gaining the upper hand. Public perception is easily manipulated and a poor facility is not worth the strategic ramifications if something goes wrong.

Permission Matters

Before deviating from doctrine or experimenting outside of standard operating procedures, new ideas must be thoroughly vetted at the highest levels of the chain of

command. Before implementing new tactics, techniques, and procedures, leaders must sensitise and train everyone up and down the chain. Innovation in detention operations can lead to disaster; detention personnel protect themselves by following the rules.

Quality Detainees Matter

The policy of apprehending all military aged males in cordon and sweep operations is counterproductive and potentially catastrophic to detention operations. Prisoners with no intelligence value should be released immediately, or rather, never be apprehended in the first place. The practice of war fighters taking vast quantities of prisoners and relegating the task of sorting through them to detention and intelligence personnel, as practiced early on in Iraq and Afghanistan, is costly and immoral; it creates enemies out of the very people whose help is vital to the end state of winning the war.

Detainee Classification Matters

Properly classifying detainees is an important first step in detention operations. At a minimum, all detainees should be afforded fair treatment under Common Article 3 of the Geneva Conventions even before their final status has been determined.

Detention Location Matters

Detainees should be left in theatre if feasible. Detaining powers should commit the necessary resources to facilitate this course of action. This allows for an easier and cheaper intelligence collection, detention, and release process; it also prevents legal dilemmas, as evidenced by the detainee status quandary at GTMO.

Detainee Segregation Matters

The segregation of detainees based on ideology has been commonplace in detention operations throughout history. During the Revolutionary War, captured Hessian mercenaries were separated from the British prisoners. In WWII, hard-core Nazis were eventually isolated from the regular German soldiers after wreaking havoc in US

detention facilities. In the Korean War, North Korean communist soldiers were separated from regular conscripts in US custody. Extremist Islamic fighters were ultimately sent to GTMO, but General Dunlavey fought the detention commander who refused to separate the hard-core *mujahadeen* from the moderates. Separation reduces violence and encourages cooperation with intelligence collectors.

Detainee Re-education Matters

Long-term detention should include re-education, even if it does not prove effective for every detainee; idle, ideological detainees provided with religious materials, per the spirit of the Geneva Conventions, self-radicalise. Experience shows detainees who are provided educational and vocational opportunities are willing to improve themselves. Saudi Arabia has had success in de-radicalising some Islamic extremists. Opportunities should be offered early on.

Cultural Literacy Matters

The more experience detention personnel have with the languages, cultures, and religions of the detainees, the better they will be able to understand them and work with them. Organic cultural assets within the military must be identified, leveraged, and prized. When these resources have been exhausted, civilian contractors should be utilised to bridge the gap and support the mission.

Appendix A

The Lieber Code of 1863

**CORRESPONDENCE, ORDERS, REPORTS, AND RETURNS OF THE UNION AUTHORITIES
FROM JANUARY 1 TO DECEMBER 31, 1863.--#7
O.R.--SERIES III--VOLUME III [S# 124]**

GENERAL ORDERS No. 100.

WAR DEPT., *ADJT. GENERAL'S OFFICE*,
Washington, April 24, 1863.

The following "Instructions for the Government of Armies of the United States in the Field," prepared by Francis Lieber, LL.D., and revised by a board of officers, of which Maj. Gen. E. A. Hitchcock is president, having been approved by the President of the United States, he commands that they be published for the information of all concerned.

By order of the Secretary of War:
E. D. TOWNSEND,
Assistant Adjutant-General.

*Note: Only section 3 and 4 are in this appendix.

SECTION III.--Deserters--Prisoners of war--Hostages--Booty on the battle-field.

48. Deserters from the American Army, having entered the service of the enemy, suffer death if they fall again into the hands of the United States, whether by capture or being delivered up to the American Army; and if a deserter from the enemy, having taken service in the Army of the United States, is captured by the enemy, and punished by them with death or otherwise, it is not a breach against the law and usages of war, requiring redress or retaliation.

49. A prisoner of war is a public enemy armed or attached to the hostile army for active aid, who has fallen into the hands of the captor, either fighting or wounded, on the field or in the hospital, by individual surrender or by capitulation.

All soldiers, of whatever species of arms; all men who belong to the rising *en masse* of the hostile country; all those who are attached to the Army for its efficiency and promote directly the object of the war, except such as are hereinafter provided for; all disabled men or officers on the field or elsewhere, if captured; all enemies who have thrown away their arms and ask for quarter, are prisoners of war, and as such exposed to the inconveniences as well as entitled to the privileges of a prisoner of war.

50. Moreover, citizens who accompany an army for whatever purpose, such as sutlers, editors, or reporters of journals, or contractors, if captured, may be made prisoners of war and be detained as such.

The monarch and members of the hostile reigning family, male or female, the chief, and chief officers of the hostile government, its diplomatic agents, and all persons who are of particular and singular use and benefit to the hostile army or its government, are, if captured on belligerent ground, and if unprovided with a safe-conduct granted by the captor's government, prisoners of war.

51. If the people of that portion of an invaded country which is not yet occupied by the enemy, or of the whole country, at the approach of a hostile army, rise, under a duly authorized levy, *en masse* to resist the invader, they are now treated as public enemies,

and, if captured, are prisoners of war.

52. No belligerent has the right to declare that he will treat every captured man in arms of a levy *en masse* as a brigand or bandit.

If, however, the people of a country, or any portion of the same, already occupied by an army, rise against it, they are violators of the laws of war and are not entitled to their protection.

53. The enemy's chaplains, officers of the medical staff, apothecaries, hospital nurses, and servants, if they fall into the hands of the American Army, are not prisoners of war, unless the commander has reasons to retain them. In this latter case, or if, at their own desire, they are allowed to remain with their captured companions, they are treated as prisoners of war, and may be exchanged if the commander sees fit.

54. A hostage is a person accepted as a pledge for the fulfillment of an agreement concluded between belligerents during the war, or in consequence of a war. Hostages are rare in the present age.

55. If a hostage is accepted, he is treated like a prisoner of war, according to rank and condition, as circumstances may admit.

56. A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.

57. So soon as a man is armed by a sovereign government and takes the soldier's oath of fidelity he is a belligerent; his killing, wounding, or other warlike acts are no individual crimes or offenses. No belligerent has a right to declare that enemies of a certain class, color, or condition, when properly organized as soldiers, will not be treated by him as public enemies.

58. The law of nations knows of no distinction of color, and if an enemy of the United States should enslave and sell any captured persons of their Army, it would be a case for the severest retaliation, if not redressed upon complaint.

The United States cannot retaliate by enslavement; therefore death must be the retaliation for this crime against the law of nations.

59. A prisoner of war remains answerable for his crimes committed against the captor's army or people, committed before he was captured, and for which he has not been punished by his own authorities.

All prisoners of war are liable to the infliction of retaliatory measures.

60. It is against the usage of modern war to resolve, in hatred and revenge, to give no quarter. No body of troops has the right to declare that it will not give, and therefore will not expect, quarter; but a commander is permitted to direct his troops to give no quarter, in great straits, when his own salvation makes it impossible to cumber himself with prisoners.

61. Troops that give no quarter have no right to kill enemies already disabled on the ground, or prisoners captured by other troops.

62. All troops of the enemy known or discovered to give no quarter in general, or to any portion of the Army, receive none.

63. Troops who fight in the uniform of their enemies, without any plain, striking, and uniform mark of distinction of their own, can expect no quarter.

64. If American troops capture a train containing uniforms of the enemy, and the commander considers it advisable to distribute them for use among his men, some striking mark or sign must be adopted to distinguish the American soldier from the enemy.

65. The use of the enemy's national standard, flag, or other emblem of nationality, for the purpose of deceiving the enemy in battle, is an act of perfidy by which they lose all claim to the protection of the laws of war.

66. Quarter having been given to an enemy by American troops, under a misapprehension of his true character, he may, nevertheless, be ordered to suffer death if, within three days after the battle, it be discovered that he belongs to a corps which gives no quarter.

67. The law of nations allows every sovereign government to make war upon another sovereign State, and, therefore, admits of no rules or laws different from those of regular warfare, regarding the treatment of prisoners of war, although they may belong to the army of a government which the captor may consider as a wanton and unjust assailant.

68. Modern wars are not internecine wars, in which the killing of the enemy is the object. The destruction of the enemy in modern war, and, indeed, modern war itself, are means to obtain that object of the belligerent which lies beyond the war.

Unnecessary or revengeful destruction of life is not lawful.

69. Outposts, sentinels, or pickets are not to be fired upon, except to drive them in, or when a positive order, special or general, has been issued to that effect.

70. The use of poison in any manner, be it to poison wells, or food, or arms, is wholly excluded from modern warfare. He that uses it puts himself out of the pale of the law and usages of war.

71. Whoever intentionally inflicts additional wounds on an enemy already wholly disabled, or kills such an enemy, or who orders or encourages soldiers to do so, shall suffer death, if duly convicted, whether he belongs to the Army of the United States, or is an enemy captured after having committed his misdeed.

72. Money and other valuables on the person of a prisoner, such as watches or jewelry, as well as extra clothing, are regarded by the American Army as the private property of the prisoner, and the appropriation of such valuables or money is considered dishonorable, and is prohibited.

Nevertheless, if large sums are found upon the persons of prisoners, or in their possession, they shall be taken from them, and the surplus, after providing for their own support, appropriated for the use of the Army, under the direction of the commander, unless otherwise ordered by the Government. Nor can prisoners claim, as private property, large sums found and captured in their train, although they have been placed in the private luggage of the prisoners.

73. All officers, when captured, must surrender their side-arms to the captor. They may be restored to the prisoner in marked cases, by the commander, to signalize admiration of his distinguished bravery, or approbation of his humane treatment of prisoners before his capture. The captured officer to whom they may be restored cannot wear them during captivity.

74. A prisoner of war, being a public enemy, is the prisoner of the Government and not of the captor. No ransom can be paid by a prisoner of war to his individual captor, or to any officer in command. The Government alone releases captives, according to rules prescribed by itself.

75. Prisoners of war are subject to confinement or imprisonment such as may be deemed necessary on account of safety, but they are to be subjected to no other intentional suffering or indignity. The confinement and mode of treating a prisoner may be varied during his captivity according to the demands of safety.

76. Prisoners of war shall be fed upon plain and wholesome food, whenever practicable, and treated with humanity.

They may be required to work for the benefit of the captor's government, according to their rank and condition.

77. A prisoner of war who escapes may be shot, or otherwise killed, in his flight; but neither death nor any other punishment shall be inflicted upon him simply for his attempt to escape, which the law of war does not consider a crime. Stricter means of

security shall be used after an unsuccessful attempt at escape.

If, however, a conspiracy is discovered, the purpose of which is a united or general escape, the conspirators may be rigorously punished, even with death; and capital punishment may also be inflicted upon prisoners of war discovered to have plotted rebellion against the authorities of the captors, whether in union with fellow-prisoners or other persons.

78. If prisoners of war, having given no pledge nor made any promise on their honor, forcibly or otherwise escape, and are captured again in battle, after having rejoined their own army, they shall not be punished for their escape, but shall be treated as simple prisoners of war, although they will be subjected to stricter confinement.

79. Every captured wounded enemy shall be medically treated, according to the ability of the medical staff.

80. Honorable men, when captured, will abstain from giving to the enemy information concerning their own army, and the modern law of war permits no longer the use of any violence against prisoners in order to extort the desired information, or to punish them for having given false information.

SECTION IV.--*Partisans--Armed enemies not belonging to the hostile army--Scouts--Armed prowlers-- War-rebels.*

81. Partisans are soldiers armed and wearing the uniform of their army, but belonging to a corps which acts detached from the main body for the purpose of making inroads into the territory occupied by the enemy. If captured they are entitled to all the privileges of the prisoner of war.

82. Men, or squads of men, who commit hostilities, whether by fighting, or inroads for destruction or plunder, or by raids of any kind, without commission, without being part and portion of the organized hostile army, and without sharing continuously in the war, but who do so with intermitting returns to their homes and avocations, or with the occasional assumption of the semblance of peaceful pursuits, divesting themselves of the character or appearance of soldiers--such men, or squads of men, are not public enemies, and therefore, if captured, are not entitled to the privileges of prisoners of war, but shall be treated summarily as highway robbers or pirates.

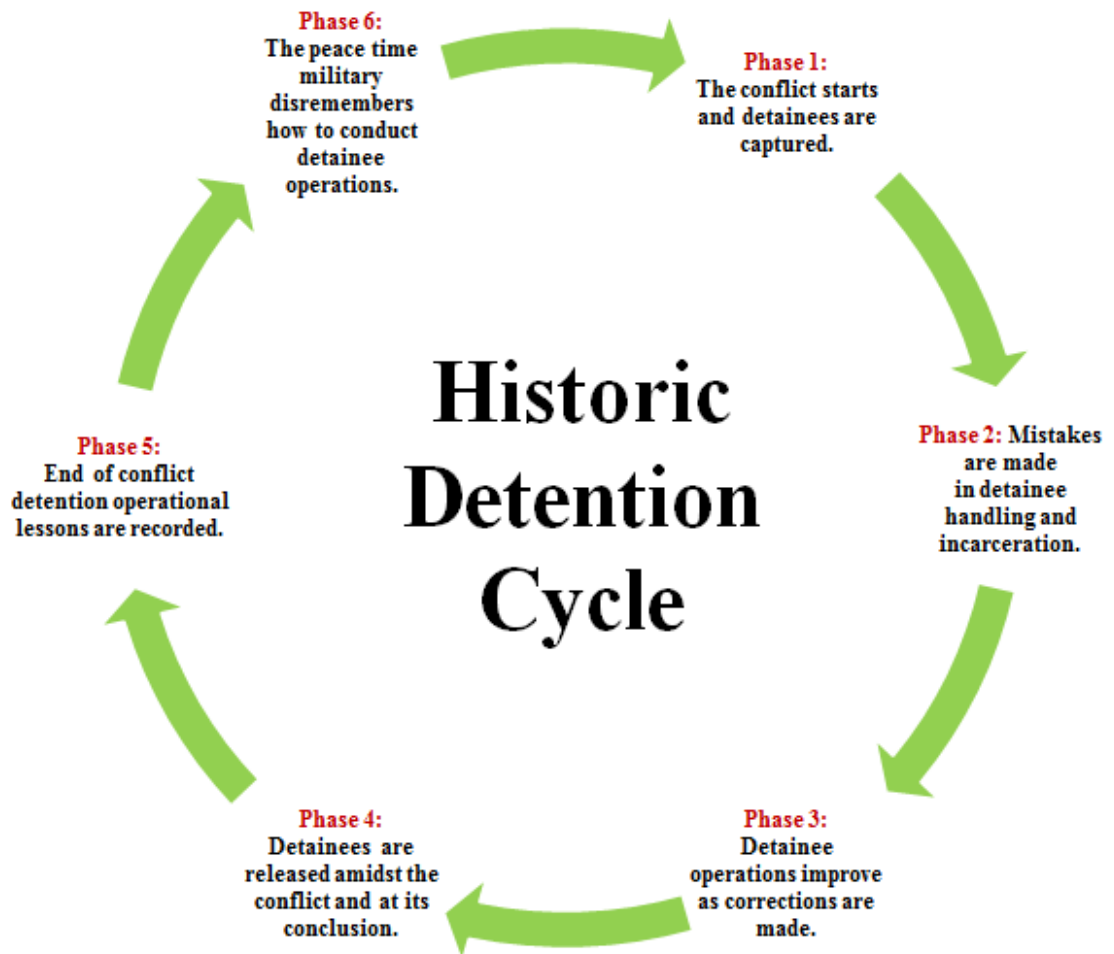
83. Scouts or single soldiers, if disguised in the dress of the country, or in the uniform of the army hostile to their own, employed in obtaining information, if found within or lurking about the lines of the captor, are treated as spies, and suffer death.

84. Armed prowlers, by whatever names they may be called, or persons of the enemy's territory, who steal within the lines of the hostile army for the purpose of robbing, killing, or of destroying bridges, roads, or canals, or of robbing or destroying the mail, or of cutting the telegraph wires, are not entitled to the privileges of the prisoner of war.

85. War-rebels are persons within an occupied territory who rise in arms against the occupying or conquering army, or against the authorities established by the same. If captured, they may suffer death, whether they rise singly, in small or large bands, and whether called upon to do so by their own, but expelled, government or not. They are not prisoners of war; nor are they if discovered and secured before their conspiracy has matured to an actual rising or to armed violence.¹⁶³⁰

¹⁶³⁰Townsend, E. D., Assistant Adjutant-General, War Department, *General Orders # 100, Correspondence, Orders, Reports, and Returns of the Union Authorities from January 1 to December 31, 1863.--#7 O.R.--Series III--Volume III [S# 124]*, (Washington D.C.: War Department, 24 April 1863), available at: <http://www.au.af.mil/au/awc/awcgate/law/liebercode.htm#section3>, Accessed 5 May 2010.

Appendix B



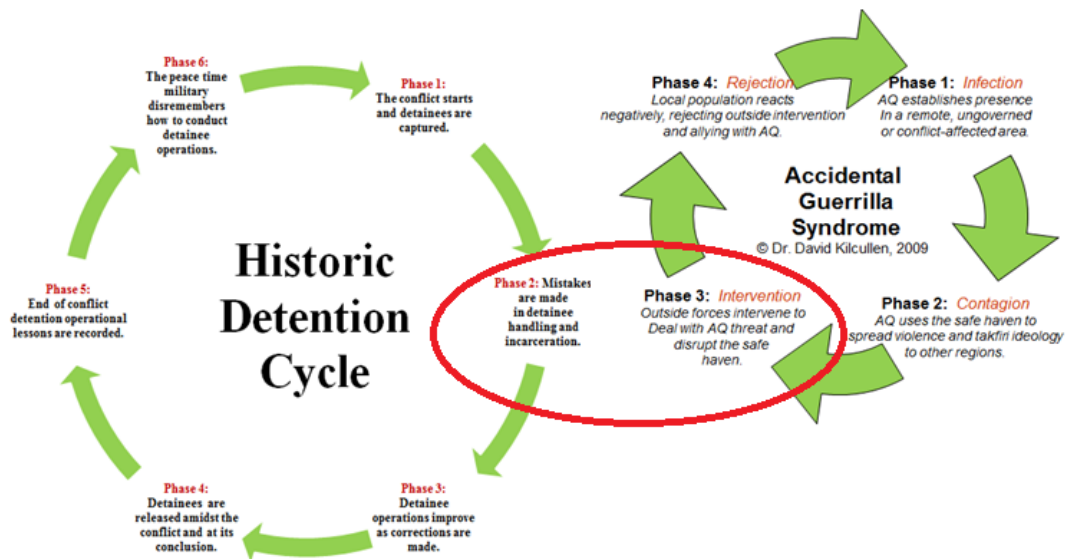
Appendix C

Twenty Eight Articles: Fundamentals of a Company-level Counterinsurgency

1. Know your turf.
2. Diagnose the problem.
3. Organize for intelligence.
4. Organize for interagency operations.
5. Travel light and harden combat service support (CSS).
6. Find a political / cultural advisor.
7. Train the squad leaders, then trust them.
8. Rank is nothing; talent is everything.
9. Have a game plan.
10. Be there.
11. Avoid knee jerk responses to first impressions.
12. Prepare for handover from day one.
13. Build trusted networks.
14. Start easy.
15. Seek early victories.
16. Practice deterrent patrolling.
17. Be prepared for setbacks.
18. Remember the global audience.
19. Engage the women, beware the children.
20. Take stock regularly.
21. Exploit a single narrative.
22. Local forces should mirror the enemy, not ourselves.
23. Practice armed civil affairs.
24. Small is beautiful.
25. Fight the enemy's strategy, not his forces.
26. Build your own solution, only attack the enemy when he gets in way.
27. Keep your extraction plan secret.
28. Whatever else you do, keep the initiative.¹⁶³¹

¹⁶³¹ David Kilcullen, "Twenty Eight Articles: Fundamentals of Company Level Counterinsurgency", *Military Review: The Professional Journey of the US Army*, March 2006, Available at: [usacac.army.mil/cac2/coin/.../28_Articles_of_COIN-Kilcullen\(Mar06\).pdf](http://usacac.army.mil/cac2/coin/.../28_Articles_of_COIN-Kilcullen(Mar06).pdf), Accessed on 29 June 2010Ibid., pp. 2-11

Appendix D



Appendix E

United States (US) -International Security and Assistance Force (ISAF) Afghanistan Strategy

Formula: COIN (Clear, hold, build, transition) + CT (F3EAD) = End state

COIN = Counterinsurgency; strategy to defeat insurgent guerilla forces.

Clear = Remove insurgents from population centers.

Hold = Provide security living in Afghan populated areas with Afghan security forces.

Build = Provide infrastructure to improve local populations lives such as roads, schools etc.

Transition = When ready, turn over security of population to Afghan government.

CT = Counterterrorism; destroying terrorists and their infrastructure.

Find = Locate the enemy.

Fix = Pinpoint exactly the location of enemy forces.

Finish = Kill or capture enemy forces.

Exploit = Gather up all available information and clues.

Analyse = Using JIPOE, analyse intelligence information newly gleaned with additional information to create a broader picture of the situation.

Disseminate = Share information with those who need to know in order to prosecute the next target.

JIPOE = Joint Intelligence Preparation of the Operating Environment

End state = Leave Afghanistan when the Afghan government is able to defend itself from outside aggression and from allowing the Taliban and other counter government forces to take over the government.

Appendix F

David Gallula's Eight COIN Steps for Clearing an Area of Guerrilla Insurgent Forces

1. Concentrate enough armed forces to destroy or to expel the main body of armed insurgents.
2. Detach for the area sufficient troops to oppose an insurgent's comeback in strength, install these troops in the hamlets, villages, and towns where the population lives.
3. Establish contact with the population; control its movements in order to cut off its links with the guerrillas.
4. Destroy the local insurgent political organisations.
5. Set up, by means of elections, new provisional local authorities.
6. Test these authorities by assigning them various concrete tasks. Replace the softs and the incompetents; give full support to the active leaders. Organise self-defence units.
7. Group and educate the leaders in a national political movement.
8. Win over or suppress the last insurgent remnants.¹⁶³²

¹⁶³² Galula, *Counterinsurgency Warfare: Theory and Practice*, pp. 55-56

Appendix G

T. E. Lawrence Letter to B. H. Liddell Hart

26.6.33

Dear L.H. You talk of a summing up to come. Will you (if you agree with my feeling) in it strike a blow for hard work and thinking? I was not an instinctive soldier, automatic with intuitions and happy ideas. When I took a decision, or adopted an alternative, it was after studying every relevant - and many an irrelevant - factor. Geography, tribal structure, religion, social customs language, appetites, standards - all were at my finger-ends. The enemy I knew almost like my own side. I risked myself among them a hundred times, to *learn*.

The same with tactics. If I used a weapon well, it was because I could handle it. Rifles were easy. I put myself under instruction for Lewis, Vickers, and Hotchkiss (Vickers in my O.T.C. days, and rifles, and pistols) If you look at my article in *The Pickaxe* you will see how much I learned about explosives, from my R.E. teachers, and how far I developed their methods. To use aircraft I learned to fly. To use armoured cars I learned to drive and fight them. I became a gunner at need and could doctor and judge a camel.

The same with strategy. I have written only a few pages on the art of war - but in these I levy contribution from my predecessors of five languages. You are one of the few living Englishmen who can see the allusions and quotations, the conscious analogies, in all I say and do, militarily.

Do make it clear that generalship, at least in my case, came of understanding, of hard study and brain-work and concentration. Had it come easy to me I should not have done it so well.

If your book could persuade some of our new soldiers to read and mark and learn things outside drill manuals and tactical diagrams, it would do a good work. I feel a fundamental, crippling incuriousness about our officers. Too much body and too little head. The perfect general would know everything in heaven and earth.

So please, if you see me that way and agree with me, do use me as a text to preach for more study of books and history, a greater seriousness in military art. With 2,000 years of examples behind us we have no excuse, when fighting, for not fighting well.

I like your little book – whatever it does not repeat a told tale. It starts at Chap. II by the way, and goes on to page 335. That's what you've sent me.

Yours

T.E.S.¹⁶³⁴

¹⁶³⁴ T. E. Lawrence letter to B. H. Liddell-Hart, 26 June 1933, located at: [http://telawrence.net/telawrence net/letters/1933/330626 1 hart.htm](http://telawrence.net/telawrence%20net/letters/1933/330626%201%20hart.htm), accessed on 28 June 2010

Appendix H

JTF-435 Organizational Chart



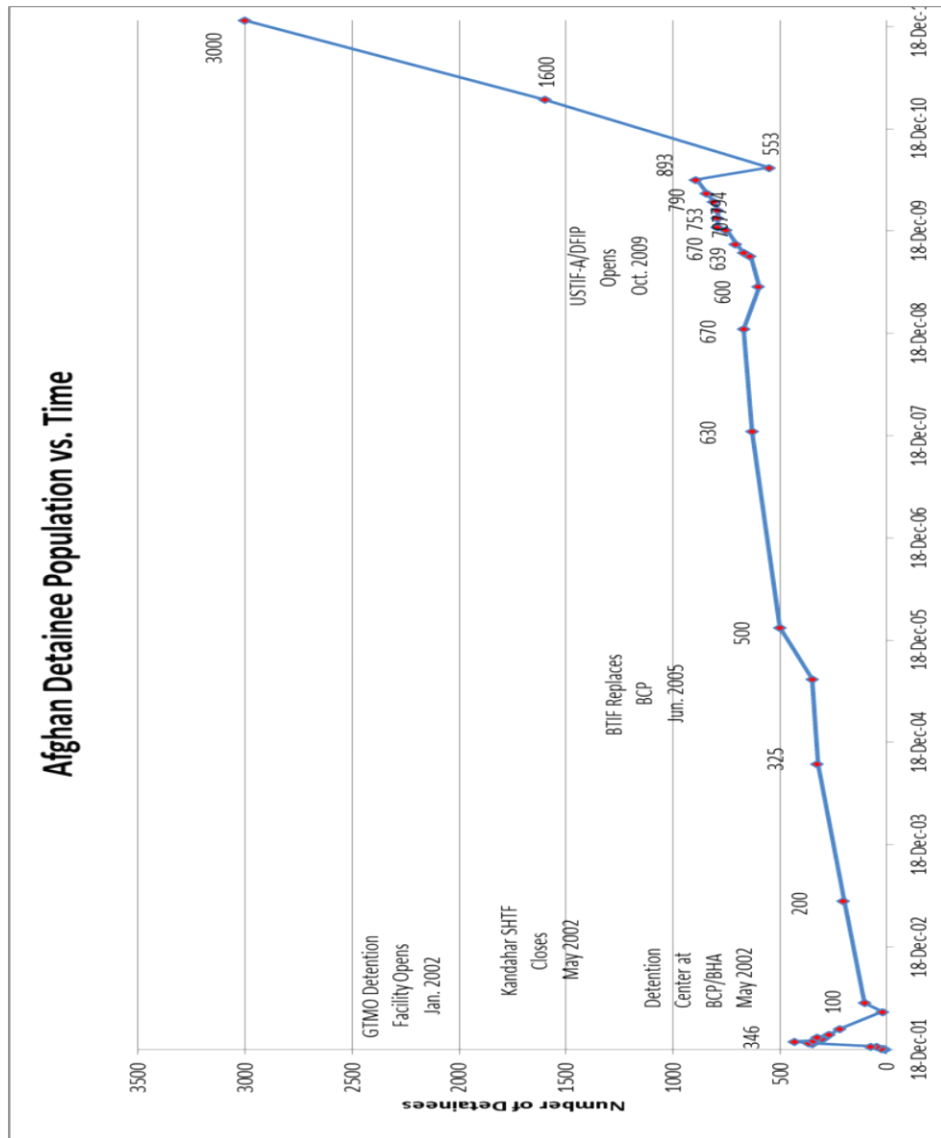
Appendix I

Authorized US DOD Interrogation Approaches 1992 to 2006

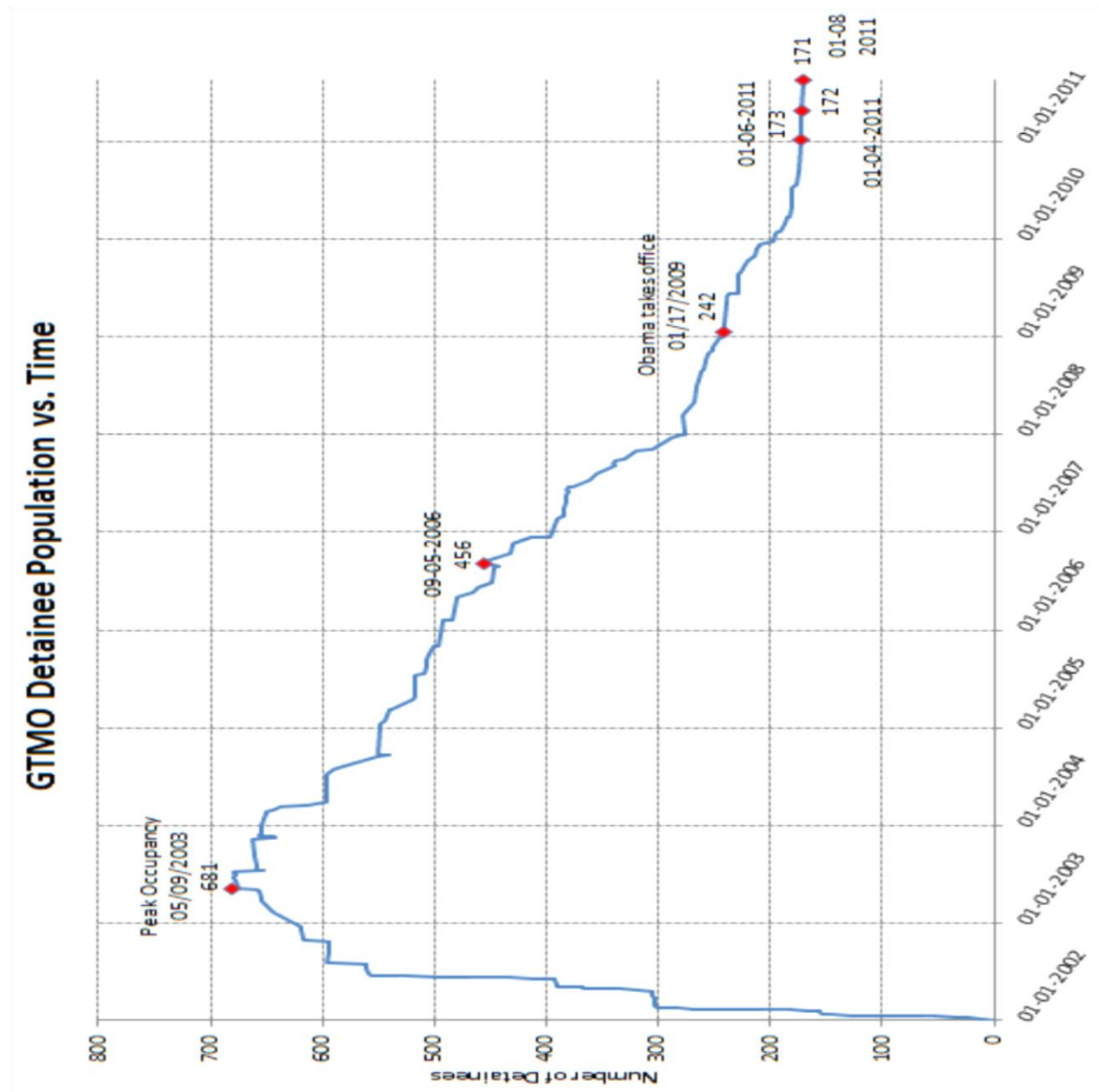
1. Direct Approach
2. Incentive Approach
3. Emotional Approach
4. Emotional Love Approach
5. Emotional Hate Approach
6. Increased Fear Up Approach
7. Fear Up (Harsh)
8. Fear Up (Mild)
9. Decreased Fear Down Approach
10. Pride And Ego Approach
11. Pride And Ego Up Approach
12. Pride And Ego Down Approach
13. Futility Technique Approach
14. 'We Know All' Approach
15. 'Establish Your Identity' Approach
16. Repetition Approach
17. File And Dossier Approach
18. 'Mutt And Jeff' ("Friend And Foe") Approach
19. Rapid Fire Approach
20. Silence Approach¹⁶³⁵

¹⁶³⁵ *Field Manual 34-52: Intelligence Interrogation*, (Washington, DC: Department of the Army, 1992)

Appendix J



Appendix K



Appendix L

Key US Government Decisions Regarding Detention Post 9/11

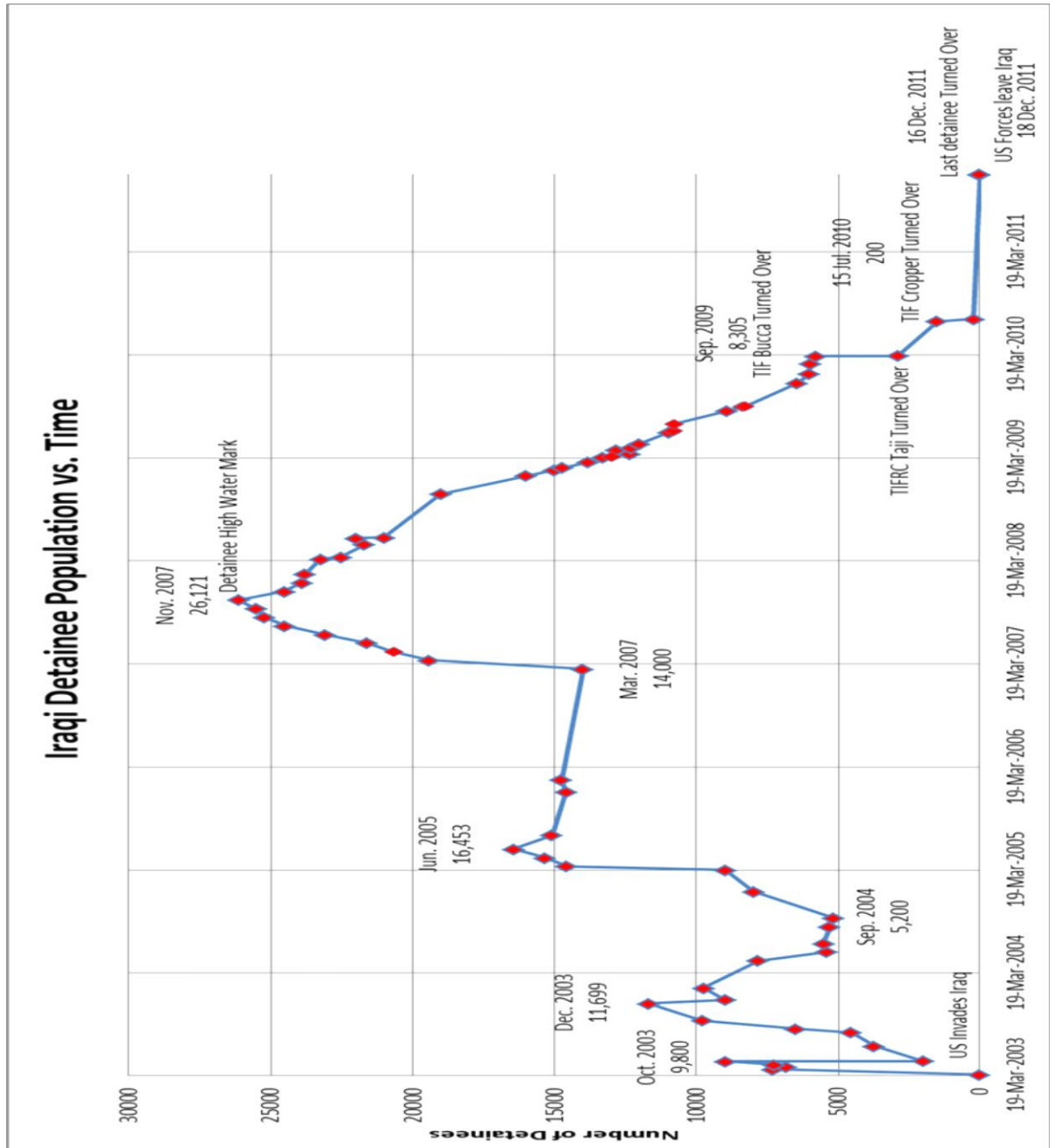
<i>Key Decision</i>	<i>Branch</i>	<i>Date</i>	<i>Summary</i>
Military Order: Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism	Executive	13 November 2001	Established Military Commissions Under the SECDEF
Military Commission Order #1	DOD	21 March 2002	Established first rules and procedures for commissions
Hamdi vs. Rumsfeld	SCOTUS	28 June 2004	US citizens have access to the courts even if caught in the battlefield. Habeas Corpus.
Rasul vs. Bush	SCOTUS	28 June 2004	US can detain persons in the GWOT but US courts have jurisdiction because GTMO is US
Detainee Treatment Act of 2005	Congress	5 October 2005	Prohibits cruel detainee treatment and says the US Army FM is the standard for detention
Hamdan vs. Rumsfeld	SCOTUS	29 June 2006	Military Commissions violate the UCMJ and the GC
Military Commissions Act (MCA) of 2006	Congress	17 October 2006	Guarantees detainee right to see evidence and be present at hearings
Military Commissions Manual	DOD	18 January 2007	Implements the MCA of 2006
Boumediene vs. Bush	SCOTUS	12 June 2008	Detainees at GTMO have Habeas rights. MCA of 2006 unconstitutional.
Military Commissions Act (MCA) of 2009	DOD	28 October 2009	Obama campaign pledge changes: Hearsay and info obtained through rough treatment removed as evidence
Military Commissions Manual	DOD	18 May 2010	Implements the MCA of 2009

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10. General Formica, *Article 15-6 Investigation of CJSOTF-AP and 5th SF Group Detention Operations*, November 8, 2004
11. LTG Kiley, *Final Report: Assessment of Detainee Medical Operations for OEF, Gitmo, and OIF*, April 13, 2005
12. General Schmidt and Furlow, *Army Regulation 15-6: Final Report - Investigation into FBI Allegations of Detainee Abuse at Guantanamo Bay, Cuba Detention Facility*, amended June 9, 2005
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Military #6, Author Interview, Draper, UT, 22 July 2009

Military #7, Author Interview, Fort Walton Beach, FL, 23 March 2009

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